Crime and Criminal Offences:
Alcohol and Drug Offences and Solvent Abuse/Misuse

Version 2.2
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Authorised Professional Practice

These notes are aimed at learners completing their Initial training to meet the learning outcomes specified on the National Policing Curriculum. The primary source of content is the Authorised Professional Practice (APP) and the supporting evidence based research of “what works” in policing.

APP can be found at: http://www.app.college.police.uk/
1. Alcohol Offences

These notes contain information about alcohol and drug offences, and your powers to deal with certain alcohol related offences are a key focus of this chapter.

In relation to alcohol offences and young persons, this chapter defines the purpose of the Confiscation of Alcohol (Young Persons) Act 1997 and details the powers available for dealing with young people who are drinking alcohol in a public place.

Offences contrary to the Licensing Act 2003 and the powers available to enter licensed premises under the Act are also included in this chapter.

Drug offences are detailed within this chapter. A particular focus is on your powers of entry, search and seizure when dealing with drug offences. The subject of solvent abuse is also covered. The household substances that may be misused are outlined as well as the signs and symptoms that may suggest that a person is abusing solvents.

1.1 Links between alcohol, crime, disorder and anti-social behaviour

There are strong links between the consumption of alcohol and crime, domestic abuse, nuisance and other public order offences. Alcohol related violence and disorder are a highly visible part of the night time economy.

Alcohol related violence and disorder are typically fuelled by:

- Individual reactions – Alcohol impairs cognitive and motor skills. People, who drink can often misread situations, react aggressively and have accidents. The culture of ‘drinking to get drunk’, often sets the tone for the night time economy.
• The supply of alcohol – Premises where there is little seating, loud music, large numbers of young customers, poorly trained staff and excessively cheap promotions are particularly likely to fuel disorder.

• The surrounding infrastructure – At night, fights and disputes occur at locations such as food outlets, taxi stands and bus stops.

**Drunk in a Public Place and Drunk and Disorderly**

Drunkenness means where the defendant has taken intoxicating liquor (alcohol) to an extent that affects his/her ‘steady self control’.

**Signs and symptoms of drunkenness**

The symptoms of drunkenness can easily be mistaken for those of physical illness and injury or mental ill health. For instance, slurred speech and staggering could indicate the person has a disability or has experienced an injury. If there is any doubt, you should assume that the person has an illness or injury and summon medical assistance or arrange for the person to be conveyed to hospital without delay.

The more obvious signs of a person appearing drunk are:

• Lack of physical coordination
• Slurred or incoherent speech
• Breath smelling of intoxicating liquor
• Eyes watery, bloodshot or glazed
• Complexion flushed and sweaty
• Clothing may be dishevelled, dirty or stained with vomit

However, a person who is drowsy and slurring their speech may not be intoxicated but may instead:

• Have a medical condition such as diabetes or epilepsy
• Have experienced a head injury
• Be experiencing drug intoxication or overdose
• Have experienced a stroke
Reasons for not taking drunken people home

Under no circumstances should a police officer take drunken people home if there is no responsible person at home who can take care/charge of them. This is because:

- They could later become ill and not able to look after themselves, and as a result, may come to harm.
- They may later make allegations about the officer (such as claim that some of their personal belongings are missing or inappropriate touching).

1.2 Offences relating to being drunk in a public place

The main offences in relation to drunkenness deal with being drunk in a public place. The offences are commonly referred to as:

- ‘simple drunkenness’ or ‘drunk and incapable’
- being ‘drunk and disorderly’

Simple drunkenness – Section 12 Licensing Act 1872

The Licensing Act 1872, Section 12 (1) states that:

“Every person found drunk in any highway or other public place, whether a building or not, or on any licensed premises, shall be liable to a penalty not exceeding level 1 on the standard scale.”

Public place means any highway or public place and includes any place to which at the material time the public have or are permitted to have access, whether on payment or otherwise.

The drunkenness must come from intoxicating liquor, not another drug. If drink and another drug have been taken, it must be the drink that made the person drunk.

Being drunk and incapable – Section 1 of the Licensing Act 1902

The definition of ‘incapable’ comes from Section 1 of the Licensing Act 1902 which provides for the arrest of ‘incapable drunkards’ (the provision is still in force although the power of arrest itself is now contained within s.24 of PACE). This section says:
“If a person is found drunk in any highway or other public place, whether a building or not, or on any licensed premises, and appears to be incapable of taking care of himself, he may be dealt with according to law.”

The effect of this section was to set the standard for arrest for drunkenness at ‘drunk and incapable’ rather than just being drunk.

**Examples of where a person may seem drunk and incapable:**

- A person is found on the floor in the toilets of a public house apparently asleep. The person smells of intoxicating liquor and responds, when spoken to and shaken, by giggling and turning over on the floor as if they may be in bed. Their eyes are red and bloodshot and they don’t seem to be able to focus on anything.

- A person is seen staggering about on the pavement of a dimly lit road at night. They cannot walk in a straight line and keep stumbling off the kerb veering onto the busy road. You observe various signs and symptoms of drunkenness such as their unsteady gait.

- A person has collapsed to the floor in the High Street. They have vomit down their front and keep urinating in their trousers. They are holding a balloon and a half empty beer glass and can be heard snoring loudly. They respond to your questions by giggling, are incoherent and then return to snoring after urinating once more.

Under Section 34 of the Criminal Justice Act 1972 a person arrested for this offence may be taken to an approved treatment centre.

**Drunk and disorderly – Section 91(1) Criminal Justice Act 1967**

The Criminal Justice Act 1967, Section 91(1) states that:

> “Any person who in any public place is guilty, while drunk, of disorderly behaviour shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.”

‘Public place’ has the same meaning as in the offence of simple drunkenness above.
### Examples:

- A person is stood outside a pub displaying signs and symptoms of drunkenness. They are swaying and appear to be finding it difficult to stand still and upright. They are calling out to passers by saying they are going to ‘Kick their ****ing head in’ and ‘Come on then’ whilst waving their fists about.

- Several people are singing loudly and dancing around a hole in the pavement with traffic cones on their heads outside a vulnerable peoples’ sheltered housing complex. They are also displaying signs of drunkenness.

- A group of people are sat on a bench near to the entrance to a primary school. They have empty bottles of vodka that they are throwing to others stood near-by and they all display signs and symptoms of being drunk. The others use the bottles to play football with and have already smashed several bottles. They swear profusely and threaten any parents and children that pass in or out of the school.

This offence is considered to be more serious than 'simple drunk' as the behaviour is more likely to affect other people. Noisy, aggressive, violent or quarrelsome behaviour could be seen as some examples of disorderly behaviour.

It is important to establish the person’s condition in order to suspect that he or she is drunk and that the behaviour, including the words and conduct is ‘disorderly’.

This offence can also be dealt with by issuing a penalty notice for disorder (PND) for anyone aged 18 or over. You should check local force policy regarding for guidance on this.

**Evidence of drunkenness**

It is not always necessary to provide expert medical opinion at court of the person’s condition for a defendant to be convicted of an offence involving drunkenness.

A police officer is deemed to be an expert witness in court in relation to drunkenness.

**Drunk whilst in custody**

If the custody sergeant deems the drunken person as being too drunk to detain, then arrangements will be made to remove that person to hospital.
It is particularly important to monitor the condition of a person who is drunk when in police custody. They must be placed where they cannot fall. If necessary, they should be placed on the floor in the ‘recovery position’ so that they do not inhale their own vomit. This avoids the possibility of asphyxiation.

In addition to the legislation to tackle drunkenness in a public place, there are a number of other pieces of legislation which gives the police the powers to proactively assist in preventing alcohol related crime and disorder in order to ensure public safety, prevent public nuisance and protect children from harm.

**Alcohol consumption in designated public places**

**Failing to Comply with Requirement in Designated Public Place – Section 12(4) Criminal Justice and Police Act 2001**

Section 12 of the Criminal Justice and Police Act 2001 was introduced to assist in the combating of alcohol-related disorder. The offence deals with the consumption of alcohol in areas which have been declared ‘designated’ by local authorities.

Street signs erected by the local authority in designated areas explain the restrictions.
Designated areas are usually areas where there is likely to be nuisance or annoyance to members of the public, or a section of the public, or disorder associated with the possession of alcohol, or a container for such liquor.

If a police officer (or Community Support Officer designated with these powers), reasonably believes that a person is, or has been, consuming alcohol in a designated public place or intends to consume alcohol in such a place, the constable may require the person concerned:

1. Not to consume in that place anything which is, or which the constable reasonably believes to be, alcohol.

2. To surrender anything in his possession which is, or which the constable reasonably believes to be, alcohol or a container for alcohol.

Officers should inform the person concerned that failure to comply with their request, without reasonable excuse, is an offence.

A police officer may dispose of anything surrendered to them under this section in a manner that is thought appropriate.
This offence can also be dealt with by issuing a penalty notice for disorder for anyone aged 18 or over. You should check your own force policy with regard to this procedure.

Example

- A local authority has a Designated Public Place Order (DPPO) for a park restricting the consumption of alcohol within the park boundaries. There are clear signs explaining this at all the entrances to the park. Two people are sat on a blanket quietly enjoying a picnic and a bottle of wine to celebrate an anniversary. A police officer sees them and explains they are in a designated area and the restrictions within that area. The people appear genuinely surprised, apologise saying they did not notice the signs, comply immediately with the constable’s request to stop consuming the alcohol. The people pour the remainder of the wine in their glasses away and promptly leave the park via the gate 30 metres away from where they were sat. The constable decides not to ask the people to surrender the remainder of their alcohol as they believe the people will not return and continue drinking.

- In the same park a PCSO finds a group of 10 people sat in the middle of the park with open cans of beer in their hands. There is also a case of 12 unopened cans of beer in the middle of the group. They are very loud and causing passers-by to look concerned. The PCSO has been designated the relevant powers so can take the same action as a police officer. The PCSO asks the people to surrender their open cans and the case of beer and explains that it is an offence if they fail to do so. The group, after some complaining, pour their beer away and the PCSO takes the case of 12 unopened cans to the police station as required by their force policy.

- The High Street is a DPPO and a PCSO sees a group of people sat on public benches at one end of the street with open cans of vodka-based, ready mixed drinks in their hands. The PCSOs in that policing area have not been designated with the power to ask people to stop consuming and surrender, what appear to be, alcoholic drinks in DPPOs. The PCSO uses their Airwaves set to ask for a police officer to attend that location to deal with the incident.

Disorder in a Public Place – Section 27 of the Violent Crime Reduction Act 2006

Another power that can be used to assist in combating alcohol-related crime or disorder is Section 27 of the Violent Crime Reduction Act 2006. Under this section:
A police officer in uniform may direct an individual who is aged 16 or over and in a public place:

a. requiring him to leave the locality of that place; and

b. prohibiting the individual from returning to that locality for such period (not exceeding 48 hours) from the giving of the direction as the constable may specify

providing that:

a. that the presence of the individual in that locality is likely, in all the circumstances, to cause or to contribute to the occurrence of alcohol-related crime or disorder in that locality, or to cause or to contribute to a repetition or continuance there of such crime or disorder; and

b. that the giving of a direction under this section to that individual is necessary for the purpose of removing or reducing the likelihood of there being such crime or disorder in that locality during the period for which the direction has effect or of there being a repetition or continuance in that locality during that period of such crime or disorder.

Under this section, the direction to leave the locality:

a. must be given in writing

b. may require the individual to whom it is given to leave the locality in question either immediately or by such time as the constable giving the direction may specify

c. must clearly identify the locality to which it relates

d. must specify the period for which the individual is prohibited from returning to that locality

e. may impose requirements as to the manner in which that individual leaves the locality, including his route; and

f. may be withdrawn or varied (but not extended so as to apply for a period of more than 48 hours) by a constable.

Example

- Two people are given notice to leave a pedestrian street in the town centre at 5.55 pm by the local neighbourhood officer who is on foot patrol in uniform in that area. The officer gives them a written notice that prohibits them from
returning between 6-10 pm for the next 36 hours. Most of the shops are closed during this period but local teenagers tend to gather on public benches in that area close to a fast food restaurant. Following repeated disturbances and criminal damage the officer has received intelligence stating these two people are providing alcohol to the teenagers.

**Persistently Possessing Alcohol in a Public Place – Section 30 of the Policing and Crime Act 2009**

This legislation deals with the problem of persistent possession of alcohol by minors. The law states:

“A person under the age of 18 is guilty of an offence if, without reasonable excuse, the person is in possession of alcohol in any relevant place on 3 or more occasions within a period of 12 consecutive months.”

In this context, a “relevant place” means any public place, other than excluded premises, or any place, other than a public place, to which the person has unlawfully gained access. Excluded premises are licensed premises, for which there is other legislation in respect of under age drinking.

The law refers to the possession of alcohol, not its consumption, and there must be three separate occasions when there is possession. Clearly this means that there must be three recorded instances as, on the third occasion, the previous two must be proved. The possession has to be in a public place to contravene this law. An offender may be arrested by a constable and, on conviction, fined.

**Confiscation of Alcohol from Persons Under 18 Years of Age**

The Confiscation of Alcohol (Young Persons) Act 1997 provides police officers and PCSOs with a power of confiscation where young people (under 18) are drinking in a relevant place.

**Relevant Place**

In subsection (1) “relevant place”, in relation to a person, means:

a. Any public place, other than licensed premises; or

b. Any place, other than a public place, to which the person has unlawfully gained access;
For this purpose a place is a public place if at the material time the public or any section of the public has access to it, on payment or otherwise, as of right or by virtue of express or implied permission.

The Act has been designed to allow the police to deal with situations where drinking causes a nuisance to others or may lead to further bad behaviour. You should therefore use your powers with discretion according to the circumstances. For example, it may not be necessary to confiscate alcohol consumed at a family picnic.

Section 1 of the Act states that:

1. Where a constable reasonably suspects that a person in a relevant place is in possession of alcohol and that either:
   a. he is under the age of 18; or
   b. he intends that any of the alcohol should be consumed by a person under the age of 18 in that or any other relevant place; or
   c. a person under the age of 18 who is, or has recently been, with him has recently consumed alcohol in that or any other relevant place,

the constable may require him to surrender anything in his possession which is, or which the constable reasonably believes to be, alcohol or a container for alcohol. (other than a sealed container)

1AA. A constable who imposes a requirement on a person under subsection (1) shall also require the person to state the person's name and address.

1AB. A constable who imposes a requirement on a person under subsection (1) may, if the constable reasonably suspects that the person is under the age of 16, remove the person to the person's place of residence or a place of safety.

A constable can dispose of anything surrendered to him in such manner as he considers appropriate.

A constable must require the person to state their name and address and also must tell him of his suspicion and that failing without reasonable excuse to comply with either requirement of surrendering the item or giving their name and address is an offence.
Failing to surrender alcohol – Section 1(3) of the Confiscation of Alcohol (Young Persons) Act 1997

“A person who fails without reasonable excuse to comply with a requirement imposed on him under subsection 1. or 1AA. commits an offence and is liable on summary conviction to a fine not exceeding level 2 on the standard scale”

You must also tell that person that failing to comply with the request is an offence according to Section 1(4) of the Act.

An arrest by a constable must be justified by one or more of the reasons (necessity test) stipulated in Section 24(5) PACE 1984

You do not have to be in uniform to use this power.

Disposal of alcohol

You may dispose of anything surrendered to you when dealing with this Act. This is not limited to alcohol and you could dispose of any other drink surrendered under this section as you consider appropriate.

You should be guided by your own force policy in respect of disposal options.

1.3 Liquor Licensing

Concern about the levels of alcohol related crime led to the introduction of the Licensing Act 2003. The legislation provides clear focus on the promotion of four statutory objectives:

- The prevention of crime and disorder
- Public safety
- The prevention of public nuisance; and
- The protection of children from harm

The duty to promote these objectives falls on the licensing authority. However, the police service and the operators of licensed premises must work together as both have equal responsibility to supervise premises and to ensure that alcoholic drinks are supplied and consumed in accordance with current legislation. Enforcing the law related to licensed
premises should be seen as a means of preventing alcohol related crime, rather than imposing restrictions on the majority of the population.

**Policing your area**

People leaving licensed premises in a noisy manner can adversely affect the quality of life for people living nearby. In addition to monitoring behaviour in licensed premises, it is necessary to arrange for police patrols to be present or available when the potential for alcohol-related crime is at its greatest. This is usually late at night when pubs and clubs are closing, but may also be during the day, particularly during the summer and in connection with public holidays or events, such as concerts, shows or festivals.

Most local police stations hold a record book of all the licensed premises within their area. This will hold details such as the number of police visits made and indications of potential trouble spots.

**1.4 Definitions within the Licensing Act 2003**

Listed below are some useful definitions of terms, under the Licensing Act 2003, that will be referred to within these notes.

**Relevant premises**

This term is defined under Section 159 and means licensed premises, or premises in respect of which there is in force a club premises certificate, or premises which may be used for a permitted temporary activity (this means the place subject to a temporary event notice).

**The Definition of Alcohol – Section 191**

1. In this Act, “alcohol” means spirits, wine, beer, cider or any other fermented, distilled or spirituous liquor, but does not include:

   a. Alcohol which is of a strength not exceeding 0.5% at the time of the sale or supply in question.

   b. Perfume.

   c. Flavouring essences recognised by the Commissioners of Customs and Excise as not being intended for consumption as or with dutiable alcoholic liquor.

   d. The aromatic flavouring essence commonly known as Angostura bitters.
e. Alcohol which is, or is included in, a medicinal product [or a veterinary medicinal product].

f. Denatured alcohol.

g. Methyl alcohol.

h. Naphtha.

i. Alcohol contained in liqueur confectionery.

**Designated premises supervisor**

In the Act, Section 15, references to the ‘designated premises supervisor’, in relation to premises licences, are to individuals for the time being specified in that licence as the premises supervisor.

There is nothing in the Act which prevents the holder of the premises licence from also being specified as the premises supervisor.

The main purpose of the ‘designated premises supervisor’ is to ensure that there is always one specified individual, who must be a personal licence holder, who can be readily identifiable for the premises where a premises licence is in force.

**Licensable activities**

Licences cover all licensable activities, and this is not just the sale or supply of alcohol.

Licensable activities are defined in Section 1 of the Act. They are:

- The sale by retail of alcohol.
- The supply of alcohol by or on behalf of a club to, or to the order of, a member of the club.
- The provision of regulated entertainment.
- The provision of late night refreshment.

The system of licensing is achieved through the issue of authorisations in the form of:

- Personal licences
- Premises licences
• Club premises certificates and
• Temporary event notices

Personal licences, premises licences and club premises certificates are granted by licensing authorities under the Licensing Act 2003. These will generally be the local authority for the area in which the premises are situated.

No authorisations as such are required for permitted temporary activities (temporary event notices) from the licensing authorities. Each authorisation is briefly described below.

**Personal licences**

Personal licences authorise individuals to sell or supply alcohol, or authorise the sale and supply of alcohol, for consumption on or off the premises for which a premises licence is in force. To qualify for a personal licence an individual must be:

• Aged 18 or over.
• Possess a licensing qualification recognised by the secretary of state or holds one which is certified as if it were, or is considered equivalent to it, or is a person described in regulations (this is an alternative to possessing a qualification).
• Have not had a personal licence forfeited in the previous five years.
• Be in a position to show the licensing authority that they do not have any unspent convictions for any relevant offences or any ‘foreign offence’. See Section 113 of the Licensing Act 2003.

The definition of ‘supply’ for personal licences is explained in Section 111(2) which states that “the reference to an individual supplying alcohol is to him:

a. selling alcohol by retail, or
b. supplying alcohol by or on behalf of a club to, or to the order of, a member of the club.”

A personal licence is issued for 10 years in the first instance.

**Premises Licence**

The premises licence authorises the holder of the licence to use the premises to which the licence relates (the licensed premises) for licensable activities and shows in detail the operating conditions. The licence has to include two pieces of information:
The times when licensable activities may be carried out; and

The opening hours of the premises.

Other information it should include are the dates of the licence if it is time limited and details about the individual (if any) who is to act as the designated premises supervisor (DPS). If the licence authorises the supply of alcohol, there must be a DPS, who also has to hold a personal licence. The police can object to a person being a DPS.

The definition of premises is any place and includes a vehicle, vessel or moveable structure. Trading hours will vary from one premises to another. A premises licence has effect until the licence is revoked or surrendered, but otherwise it is not time limited, unless the applicant requests a licence for a limited period.

Once the licence has been granted responsible authorities (police etc.) and any other person may seek a review of the licence and conditions attached to it.

Club premises certificates

Club premises certificates provide authorisation for qualifying clubs, such as the British Legion, local political party or social clubs, working men’s clubs, cricket/rugby clubs to use club premises for qualifying club activities. The qualifying club activities are a subset of the licensable activities shown above and include:

- The supply of alcohol by clubs to members for consumption on or off the premises.
- The sale by retail of alcohol by clubs to members’ guests for consumption on the premises.
- The provision of regulated entertainment by the club for its members and guests.

The definition of “supply of alcohol to members or guests” in contained within s.70:

Supply of alcohol to members or guests means, in the case of any club:

- The supply of alcohol by or on behalf of the club to, or to the order of, a member of the club, or
- The sale by retail of alcohol by or on behalf of the club to a guest of a member of the club for consumption on the premises where the sale takes place.
If faced with someone claiming to be selling under a club premises certificate, it should be noted that clubs can’t be authorised to sell alcohol for consumption off the premises unless they’re also authorised to sell for consumption on the premises. This restriction, along with the associated conditions, is in s.73 of the Act.

In order for a club to be deemed a ‘Qualifying club’, under Section 62 of the Act five general conditions must be met:

- Nobody can be admitted as a member without an interval of at least two days after their nomination or application for membership.

- A person who is admitted as a member other than by prior nomination or application must wait at least two days before enjoying the privileges of membership.

- The club is established and conducted in good faith as a club. This is determined by looking at matters including any arrangements restricting the club’s purchase of alcohol and the arrangements for telling members of its accounts.

- The club has at least 25 members, and

- No alcohol is supplied, or intended to be supplied, on the club premises except by or on behalf of the club.

As with premises licences, police and others can make representations on the application for a club premises certificate.

**Temporary event notices**

The most important aspect of the system of permitted temporary activities is that no authorisation as such, is required from the licensing authority for these events. An individual known as a premises user (must be at least 18 years old) who proposes to carry on a licensable activity for a temporary period of not more than 168 hours, may submit a notice to the relevant licensing authority of the proposal for the event. Such notice is defined as a temporary event notice (TEN). There are two types of TEN:

- A standard TEN, which is given no later than 10 working days before the event to which it relates.

- A late TEN, which is given not before 9 and not later than 5 working days before the event.
The notice for a TEN must be submitted and needs to show details of the proposed event and include:

- The licensable activities that are to be carried out.
- The dates on which they intend to use these premises for licensable activities.
- The times during the event that the licensable activities are to be carried out (for example, where an individual wishes to organise an event that covers 36 hours and the bar will be open for two evenings within that time).
- The maximum number of people to be allowed on the premises at any one time – which must be less than 500.
- Whether any alcohol sales are to be made for consumption on or off the premises (or both) and
- Any other information that may be prescribed.

1.5 Offences and police powers

Having now covered some of the terms, conditions and requirements contained within the Licensing Act 2003, the following notes outline the offences within the Act which can be committed in premises which sell and supply alcohol, together with the associated police powers.

There are a number of occasions when you can lawfully enter licensed premises in order to prevent or detect offences being committed which breach the Licensing Act. Listed below are the two most common you are likely to come across.

Rights of entry to licensed premises to investigate licensable activities

Section 179 of the Act concerns the right of entry to investigate licensable activities.

“Where a constable or an authorised person has reason to believe that any premises are being, or are about to be used for a licensable activity, they may enter the premises with a view to seeing whether the activity is being, or is to be, carried on under and in accordance with an authorisation”

An authorised person will include an officer from the local licensing authority. Reasonable force may be used to enter premises under these circumstances. A person commits a
summary offence if they intentionally obstruct an authorised person exercising a power under Section 179. It is already a summary offence under Section 89 of the Police Act 1996 to obstruct a constable in the lawful execution of their duty.”

Section 180 of the Act concerns a right of entry to investigate offences.

1. A constable may enter and search any premises in respect of which he has reason to believe that an offence under this Act has been, is being or is about to be committed.

2. A constable exercising a power conferred by this section may, if necessary, use reasonable force.

This power could be used in circumstances where you have reasonable belief that offences such as serving alcohol to people under the age of 18 years were taking place.

Example:

- A local pub has a function room that can be hired for private events. Information has been received by the communications centre that a disco for a 16th birthday party is in progress (in the function room) and that there are many teenagers who appear to be under the influence of alcohol in and around the premises. The anonymous intelligence source states that the pub staff are selling alcohol to everyone at the bar without checking ID for proof of age (such as Proof of Age Standards Scheme (PASS) Approved Cards). The intelligence source also claims that adults have been seen to buy alcoholic drinks and hand them to people who appear to be 15-16 years old. The Police Inspector on duty quickly arranges for some police officers currently on patrol to attend the pub, enter and search for evidence of related offences and take appropriate action if any are revealed.

It is advisable to enter licensed premises only when accompanied by another officer, preferably a supervisor, unless the need is urgent. In such cases you should always notify a supervisor of your intentions and when practicable make a full pocket notebook entry, detailing the circumstances and reasons for entering.

**Carrying on or attempting to carry on unauthorised licensable activities**

Section 136(1) of the Act makes it an offence if:
a. he carries on or attempts to carry on a licensable activity on or from any premises otherwise than under and in accordance with an authorisation, or

b. he knowingly allows a licensable activity to be so carried on.

Example:

- Some members of a local allotment owners club decide to use one of the sheds on an unused allotment as a meeting place to socialise with other like minded gardeners. Initially people bring their own soft drinks and flasks of hot drinks from their homes. One person however sees a business opportunity and they take bottles of spirits and offers to sell gardeners a small measure of spirit for a very reasonable price compared to the pubs in the area. The person has ‘attempted to carry on a licensable activity’ and has therefore committed this offence. They do not need to actually sell any alcohol.

This provision is central to the enforcement of the licensing regime introduced by the Act.

There is a defence of due diligence to this offence in s. 139. However, this does not apply to the ‘knowingly allow an activity to be carried out’ offence.

**Exposing alcohol for unauthorised sale**

Section 137 of the Act states:

1. A person commits an offence if, on any premises, he exposes for sale by retail any alcohol in circumstances where the sale by retail of that alcohol on those premises would be an unauthorised licensable activity.

2. For that purpose a licensable activity is unauthorised unless it is under and in accordance with an authorisation.

3. A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding £20,000, or to both.

4. The court by which a person is convicted of an offence under this section may order the alcohol in question, and any container for it, to be forfeited and either destroyed or dealt with in such other manner as the court may order.
The effect of this provision is that the offence can be committed in a case where no sale or attempted sale is in fact made.

**Examples:**

- The local community support the primary school whenever they can and there is an active parent teacher association. They are having a barbeque one weekend within the school grounds and someone decides it would be a good idea to sell wine, at the event, to raise funds for the school as well as raise a party spirit. They set up a stall with bottles of wine that have price tags and disposable plastic glasses. There is an honesty box on the stall and a sign asking people to donate at least the price of the tag on the bottle. The organisers did not apply for a temporary event notice.

- A village produce shop that sells locally grown flowers, vegetables etc. does not have a licence to sell alcohol of any kind. The owner displays a shelf full of home made wine that was made using locally grown fruit and berries plus a crate of wine brought back from their summer holiday in France.

There is also a defence of due diligence to this offence in s. 139.

**Keeping alcohol on premises for unauthorised sale**

Section 138 of the Act states:

1. A person commits an offence if he has in his possession or under his control alcohol which he intends to sell by retail or supply in circumstances where that activity would be an unauthorised licensable activity.

2. For that purpose a licensable activity is unauthorised unless it is under and in accordance with an authorisation.

3. In subsection (1) the reference to the supply of alcohol is a reference to the supply of alcohol by or on behalf of a club to, or to the order of, a member of the club.

4. A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

5. The court by which a person is convicted of an offence under this section may order the alcohol in question, and any container for it, to be forfeited and either destroyed or dealt with in such other manner as the court may order.
There is also a defence of due diligence to this offence in s. 139.

Allowing disorderly conduct on licensed premises

Section 140 of the Act states:

1. A person to whom subsection 2 applies commits an offence if he knowingly allows disorderly conduct on relevant premises.

2. This subsection applies:

   a. to any person who works at the premises in a capacity, whether paid or unpaid, which authorises him to prevent the conduct,

   b. in the case of licensed premises, to:

      i. the holder of a premises licence in respect of the premises, and

      ii. the designated premises supervisor (if any) under such a licence,

   c. in the case of premises in respect of which a club premises certificate has effect, to any member or officer of the club which holds the certificate who at the time the conduct takes place is present on the premises in a capacity which enables him to prevent it, and

   d. in the case of premises which may be used for a permitted temporary activity by virtue of Part 5, to the premises user in relation to the temporary event notice in question.

3. A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

 Knowingly selling alcohol to a person who is drunk

Section 141 of the Act states:

1. A person to whom subsection (2) applies commits an offence if, on relevant premises, he knowingly:

   a. sells or attempts to sell alcohol to a person who is drunk, or

   b. allows alcohol to be sold to such a person.

2. This subsection applies:
a. to any person who works at the premises in a capacity, whether paid or unpaid, which gives him authority to sell the alcohol concerned,

b. in the case of licensed premises, to:
   i. the holder of a premises licence in respect of the premises, and
   ii. the designated premises supervisor (if any) under such a licence,

c. in the case of premises in respect of which a club premises certificate has effect, to any member or officer of the club which holds the certificate who at the time the sale (or attempted sale) takes place is present on the premises in a capacity which enables him to prevent it, and

d. in the case of premises which may be used for a permitted temporary activity by virtue of Part 5, to the premises user in relation to the temporary event notice in question.

3. This section applies in relation to the supply of alcohol by or on behalf of a club to or to the order of a member of the club as it applies in relation to the sale of alcohol.

4. A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Example:
- There is a sporting event between two local, rival teams. The home team social club sells alcohol before and after the match as their licence allows them to do. One group of supporters are celebrating success and they become offensive to customers and generally rowdy. The bar staff find their drunken behaviour – such as inability to stand straight or ask for drinks without slurring their words – amusing so carry on selling them drinks.

Obtaining alcohol for a person who is drunk

Contrary to Section 142 of the Act, a person commits an offence if,

“on relevant premises, he knowingly obtains or attempts to obtain alcohol for consumption on those premises by a person who is drunk.”
Example:

- A group of people are out celebrating a friend’s imminent marriage. The bride/groom to be has already drunk a lot of alcohol; they are unable to walk unaided without falling over; their eyes are rolling about and they also appear to have vomited. One of the friends wants the bride/groom to carry on drinking, as it is still fairly early in the evening and their celebration, so the friend goes to the bar and buys another drink for them.

Failing to leave licensed premises

The personal licence holder or their agents are responsible for the conduct of people when inside their licensed premises.

Section 143 of the Act provides that a person who is drunk and disorderly commits an offence if they fail without reasonable excuse to leave the relevant premises or they enter or attempt to enter after being requested not to enter the relevant premises at the request of:

- A police constable
- Any person who works at the premises, whether paid or unpaid, in a capacity which authorises them to make such a request
- The premises licence holder or
- The designated premises supervisor (if any) under the premises licence

A police constable must help to eject drunk or disorderly individuals from relevant premises, or help to prevent them entering if requested to do so by any of those persons listed above.

Example:

- A licensed restaurant duty manager has called the communications centre asking for police assistance to eject six people from the restaurant as they are drunk and causing alarm and distress to other customers by their disorderly behaviour. Police officers attend and one instructs the manager to ask the people to leave the premises whilst the police are present. The people refuse to leave and continue their drunken disorderly behaviour. The police officer then speaks to the people and explains that
they must now leave and if they fail to do so the police officers will use reasonable force, if necessary, to ensure they leave the premises.

**Offences relating to age**

‘Children’ are categorised in different ways under the Act, depending on the offence.

**Admitting unaccompanied children to certain premises**

Section 145 of the Act makes it an offence to admit children under 16 to certain categories of relevant premises if they are not accompanied by an adult and those premises are open for the supply of alcohol for consumption there. Those premises are:

- Those exclusively or primarily used for the supply of alcohol for consumption on the premises, or
- Those open for the purpose of being used for the supply of alcohol for consumption on the premises when being used under the conditions granted by a temporary event notice and, at the time the temporary event notice in question has effect, they are exclusively or primarily used for such supplies.

It is also an offence to allow an unaccompanied child under 16 to be on relevant premises at a time between the hours of midnight and 5am when the premises are open for the supply of alcohol for consumption there.

Persons who can commit this offence are, any person who works at the premises in a capacity that gives them the authority to request the child to leave, a premises licence holder or designated premises supervisor, an officer or member of a club who is present in a capacity which enables them to request the child to leave and the premises user who has given a temporary event notice in respect of those premises.

The Act does provide defences. Where a person is charged with an offence under this section believed the child was aged 16 or over, or the adult accompanying them was aged 18 or over, and either took all reasonable steps to establish the individual’s age or nobody could reasonably have suspicion from the individual’s appearance that they were aged under 16, or 18 for the person accompanying. However, this defence only applies if a person is charged with an offence under this section by reason of their own conduct i.e. if it’s what they did, not what others did.
No offence is committed if the unaccompanied child is merely passing through the premises from or to some other place, where this is the only convenient route. There is also a defence of due diligence to this offence in s.139.

**The sale or supply of alcohol to children**

Section 146 of the Act makes it an offence to sell alcohol to children (under 18) anywhere. It states:

1. A person commits an offence if he sells alcohol to an individual aged under 18.
2. A club commits an offence if alcohol is supplied by it or on its behalf:
   a. to, or to the order of, a member of the club who is aged under 18, or
   b. to the order of a member of the club, to an individual who is aged under 18.
3. A person commits an offence if he supplies alcohol on behalf of a club:
   a. to, or to the order of, a member of the club who is aged under 18, or
   b. to the order of a member of the club, to an individual who is aged under 18.
4. Where a person is charged with an offence under this section by reason of his own conduct it is a defence that:
   a. he believed that the individual was aged 18 or over, and
   b. either:
      i. he had taken all reasonable steps to establish the individual's age, or
      ii. nobody could reasonably have suspected from the individual's appearance that he was aged under 18.
5. For the purposes of subsection (4), a person is treated as having taken all reasonable steps to establish an individual's age if:
   a. he asked the individual for evidence of his age, and
   b. the evidence would have convinced a reasonable person.
6. Where a person (“the accused”) is charged with an offence under this section by reason of the act or default of some other person, it is a defence that the accused exercised all due diligence to avoid committing it.
7. A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Example:

- A licensed tennis club sold tickets for a New Year’s Eve party. A member of bar staff thought a person looked too young to be buying alcohol and asked for proof of age. The person was in fact only 14 years old but had dressed in adult style clothing and made them self look older with a different hairstyle and make-up. The 14 year old passed over their older siblings PASS proof of age ID. The bar staff accepted it as genuine as the photo did look like the person at the bar and appeared a genuine document. In these circumstances the member of bar staff is likely to have a valid defence as they took reasonable steps to establish the person’s age before they served them.

The second part of the defence would cover a case where the individual who was under 18 looked exceptionally old for their age.

A further defence is provided in circumstances where the sale or supply was made by someone other than the person charged with the offence (for example, where the manager of a pub is charged with the offence although the actual sale was made by bar staff) if the person charged exercised all due diligence to avoid committing the offence.

Allowing the sale of alcohol to children

Section 147 creates the offence of allowing the sale of alcohol to persons aged under 18. The Act states that an offence is committed when:

1. A person to whom subsection 2. applies commits an offence if he knowingly allows the sale of alcohol on relevant premises to an individual aged under 18.

2. This subsection applies to a person who works at the premises in a capacity, whether paid or unpaid, which authorises him to prevent the sale.

3. A person to whom subsection 4. applies commits an offence if he knowingly allows alcohol to be supplied on relevant premises by or on behalf of a club:
   a. to or to the order of a member of the club who is aged under 18, or
   b. to the order of a member of the club, to an individual who is aged under 18.
4. This subsection applies to:
   a. a person who works on the premises in a capacity, whether paid or unpaid, which
      authorises him to prevent the supply, and
   b. any member or officer of the club who at the time of the supply is present on the
      relevant premises in a capacity which enables him to prevent it.

5. A person guilty of an offence under this section is liable on summary conviction to a fine
   not exceeding level 5 on the standard scale.

Persistently selling alcohol to children

Section 147A deals with repeat offences of selling alcohol to children and states:

1. A person is guilty of an offence if:
   a. on [2 or more different occasions] within a period of 3 consecutive months alcohol
      is unlawfully sold on the same premises to an individual aged under 18
   b. at the time of each sale the premises were either licensed premises or premises
      authorised to be used for a permitted temporary activity by virtue of Part 5; and
   c. that person was a responsible person in relation to the premises at each such time.

2. For the purposes of this section alcohol sold to an individual aged under 18 is unlawfully
   sold to him if:
   a. the person making the sale believed the individual to be aged under 18; or
   b. that person did not have reasonable grounds for believing the individual to be aged
      18 or over.

3. For the purposes of subsection 2, a person has reasonable grounds for believing an
   individual to be aged 18 or over only if:
   a. he asked the individual for evidence of his age and that individual produced evidence
      that would have convinced a reasonable person; or
   b. nobody could reasonably have suspected from the individual's appearance that he
      was aged under 18.

4. A person is, in relation to premises and a time, a responsible person for the purposes of
   subsection 1. if, at that time, he is:
a. the person or one of the persons holding a premises licence in respect of the premises; or

b. the person or one of the persons who is the premises user in respect of a temporary event notice by reference to which the premises are authorised to be used for a permitted temporary activity by virtue of Part 5.

5. The individual to whom the sales mentioned in subsection 1. are made may, but need not be, the same in each case.

6. The same sale may not be counted in respect of different offences for the purpose:
   a. of enabling the same person to be convicted of more than one offence under this section; or
   b. of enabling the same person to be convicted of both an offence under this section and an offence under section 146 or 147.

7. In determining whether an offence under this section has been committed, the following shall be admissible as evidence that there has been an unlawful sale of alcohol to an individual aged under 18 on any premises on any occasion:
   a. the conviction of a person for an offence under section 146 in respect of a sale to that individual on those premises on that occasion
   b. the giving to a person of a caution (within the meaning of Part 5 of the Police Act 1997) in respect of such an offence; or
   c. the payment by a person of a fixed penalty under Part 1 of the Criminal Justice and Police Act 2001 in respect of such a sale.

8. A person guilty of an offence under this section shall be liable, on summary conviction, to a fine not exceeding £10,000.

9. The Secretary of State may by order amend subsection 8. to increase the maximum fine for the time being specified in that subsection.

The purchase of alcohol by or on behalf of children

Section 149 of the Act makes it an offence for an individual aged under 18 (child) to buy or attempt to buy alcohol whether or not on licensed premises, or, if they are a member of a club, for them to have alcohol supplied to them on or behalf of the club (as a result of an act or default of the individual) or attempt to do so. The offence will not be committed if the child
was asked by a police constable or Weights and Measures Inspector, acting in the course of their duty, to buy or attempt to buy alcohol.

It is also an offence for a person to act as an agent for a child in purchasing or attempting to purchase alcohol, for example, if a child gives money to an adult to buy alcohol in an off-licence for consumption by the child. The offence also applies where a member of a club has alcohol supplied to a child or attempts to do so.

An offence is also committed by a person who buys or attempts to buy alcohol for consumption by a child on relevant premises, for example, where a father buys a drink for his 16 year old daughter in a pub. The offence also applies where a member of a club has alcohol supplied to an individual or to his order, for consumption on the premises by a child or attempts to do so.

This offence will not be committed if a person aged 18 or over buys or supplies beer, wine or cider for a person aged 16 or 17 to consume with a ‘table meal’ on relevant premises in circumstances where the 16 or 17 year old is accompanied at the meal by an adult.

Section 149(6) creates the defence of there being no reason to suspect the individual was aged under 18.

**Table meal**

‘Table meal’ is defined as a meal eaten by a person seated at a table, or at a counter or other structure which serves the purpose of a table and is not used for the service of refreshments for consumption by persons not seated at a table or structure serving the purpose of a table. Bar snacks would not count as a meal.

**The consumption of alcohol by children**

Section 150 of the Act makes it an offence for a child (under 18) knowingly to consume alcohol on relevant premises (previously defined). Thus the offence will not be committed if the child inadvertently consumes the alcohol, for example if their drink was spiked.

It is also an offence to knowingly allow the consumption of alcohol by a child on relevant premises. Persons who can commit the offence are any person who works (this includes unpaid work) at the premises in a capacity that gives them the authority to prevent the consumption and in the case of a supply by a club, to any officer or member of a club who is present at the time of the consumption in a capacity which allows them to prevent it.
The offences in this section will not be committed where a 16 or 17 year old consumes beer, wine or cider with a ‘table meal’ in circumstances where they are accompanied by an adult.

Sending a child to obtain alcohol

Section 152 of the Act states:

1. A person commits an offence if he knowingly sends an individual aged under 18 to obtain:
   a. alcohol sold or to be sold on relevant premises for consumption off the premises, or
   b. alcohol supplied or to be supplied by or on behalf of a club to or to the order of a member of the club for such consumption.

2. For the purposes of this section, it is immaterial whether the individual aged under 18 is sent to obtain the alcohol from the relevant premises or from other premises from which it is delivered in pursuance of the sale or supply.

3. Subsection 1. does not apply where the individual aged under 18 works on the relevant premises in a capacity, whether paid or unpaid, which involves the delivery of alcohol.

4. Subsection 1. also does not apply where the individual aged under 18 is sent by:
   a. a constable, or
   b. a weights and measures inspector, who is acting in the course of his duty.

5. A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Allowing unsupervised sales by children

Section 153 of the Act makes it an offence for a reasonable person to knowingly allow an individual under the age of 18 to sell or, in the case of a club, to supply alcohol unless each sale or supply has been specifically approved by a responsible person.

Definition of responsible person

For the s.153 offence, ‘responsible person’ in relation to licensed premises means:

- The holder of a premises licence in respect of the premises.
- The designated premises supervisor (if any) under such a licence, or
• Any individual aged 18 or over who is authorised for the purposes of this section by such a holder or supervisor.

The definition of responsible person in relation to premises where there is in force a club premises certificate is:

• Any member or officer of the club present on the premises in a capacity which enables him to prevent the supply in question.

The definition of responsible person in relation to premises which may be used for a permitted temporary activity is:

• The premises user, or

• Any individual aged 18 or over who is authorised for the purposes of this section by the premises user.

The offence is not committed where the alcohol is sold or supplied for consumption with a table meal in premises or a part of premises used for this purpose. The premises (or part of) must not be used for the supply of alcohol in any other way than for consumption with a table meal.

Example:

• The licensed social club employs 16 and 17 year olds to work as waiters and waitresses as they are on lower pay scales than adults. The customers mainly sit at tables to drink to watch the entertainment and no food is sold except bar snacks such as crisps. An adult takes the drink orders from the customers but the 16 and 17 year olds deliver (supply) the drinks to the customers at the tables. The offence is not committed as an adult has approved the sale.

• A licensed restaurant owner allows their 15 and 16 year old children to work as a waitress or waiter. They will be able to serve alcohol lawfully in the restaurant.

Dealing with licensing offences by way of Penalty Notices for Disorder (PND)

For anyone aged 18 or over, the following offences under the Licensing Act 2003 can be dealt with by issuing a penalty notice for disorder. However, you should check local force policy with regard to this.

Section 141 – Sells or attempts to sell alcohol to a person who is drunk.
Section 146 (1) – Sale of alcohol anywhere to a person under 18.

Section 146 (3) – Supply of alcohol by on behalf of a club to a person aged under 18.

Section 149 (3) – Buys or attempts to buy alcohol on behalf of person under 18.

Section 149 (4) – Buys or attempts to buy alcohol for consumption on relevant premises by person under 18.

Section 150 (2) – Allowing consumption of alcohol by a person under 18 on relevant premises.

Section 151 – Delivery of alcohol to children or allowing such delivery.

**Closure of premises**

Part 8 of the Act contains provisions empowering the courts and the police to make temporary closure orders in respect of certain premises. Interestingly, the provisions in this part of the Act are not restricted to premises licensed for the sale of alcohol, but extend to all relevant premises, including late night refreshment premises selling food from 11pm to 5am.

Section 160 of the Act sets out the powers to close all premises in respect of which a premises licence or a temporary event notice has effect, located in a particular geographical area for a period not exceeding 24 hours where there is or is expected to be disorder. Only premises at or near the place of the disorder or expected disorder may be the subject of such an order.

The power is exercisable by a magistrates’ court on application from a police officer of the rank of superintendent or above. It is exercisable only where the court thinks such an order is necessary to prevent disorder. It is an offence to keep premises open, or allow premises to be kept open, which are the subject of a closure order. S.160(7) states that a constable may use such force as may be necessary for the purpose of closing premises ordered to be closed under this section.

Section 161 of the Act provides a senior police officer (inspector or above) with power to close specific premises for up to 24 hours. A closure order by the officer in question may be made upon two grounds, the first of which is where there is, or is likely imminently to be, disorder on the premises, or in the vicinity of and related to the premises to the extent that the closure of the related premises is necessary in the interests of public safety. The second
ground is where the closure is necessary to prevent public nuisance, owing to the noise emanating from the premises.

In deciding whether to make a closure order, the police officer must have regard to the conduct of certain individuals at the premises. The purpose of this provision is to allow discretion in cases where, for example, it is clear that those managing the premises are treating the disorder or disturbance with sufficient gravity and are taking steps to reduce it or bring it under control.

A constable may use such force as may be necessary for the purposes of closing premises in compliance with a closure order.

A person commits an offence if, without reasonable excuse, he permits relevant premises to be open in contravention of a closure order or any extension of it.

Closure notices for persistently selling alcohol to children

You should also be aware of the powers given by Section 169A of the Licensing Act which gives the power to enforce a closure notice for persistently selling alcohol to children.

Preventive policing

Alertness to potential problems can bring about a tighter control of the running of licensed premises. A combination of effective communication skills, good relationships and appropriate use of discretion will help maintain licensing regulations and good conduct in such premises. For instance, you may already have discovered that many licensees like to see uniformed officers nearby at the end of trading hours to help them to encourage customers to drink up and leave. Your presence may also assist in the prevention of public order incidents, drink-driving and nuisance offences such as urinating in doorways.

There will be many occasions when it will be necessary to visit licensed premises, whether to attend a disturbance, take a statement or for other routine matters. You must ensure that you do not give the appearance of condoning the licensee who is breaking licensing conditions. Do not turn a blind eye when you suspect a breach of the licensing conditions. Such neglect of the law can be the very factor which leads to public disorder and other criminal acts.

As the police have a responsibility for controlling the consumption of alcohol, it is important that the behaviour of officers is beyond reproach. Condoning out of hours drinking, or
accepting free drinks, compromises that integrity. For this reason and for your own protection, any gifts such as free drinks must be refused and you should always arrange to be accompanied when entering licensed premises when you are on duty.

1.6 Mandatory Licensing Conditions

The Licensing Act 2003 (Mandatory Licensing Conditions) Order 2010/860

The mandatory licensing conditions were introduced to combat drunkenness and anti-social behaviour brought about by what is termed as ‘binge drinking’.

The licensing conditions are split into 5 categories intended to regulate suppliers of alcohol and to encourage responsible behaviour by those who own and manage clubs and bars.

The local authority who issue licences permitting the sale and consumption of alcohol have the facility to impose conditions on premises and licence holders and ultimately hold the power to either not renew or revoke licences for breaches of conditions such as these.

The five conditions are mandatory and apply to all relevant premises licences and all relevant club premises certificates which authorise the sale and supply of alcohol for consumption on the premises. These conditions don’t have to be written into the licence; they automatically apply. If the mandatory conditions are identical to, inconsistent with or more onerous than conditions written into a licence, the mandatory conditions will override the written ones.

The Five Mandatory Licensing Conditions (from Schedule 1, paragraphs 1-5)

1. Irresponsible Promotions

Paraphrasing the legislation (from Statutory Instrument 2010/860); the responsible person shall take all reasonable steps to ensure that staff on relevant premises do not carry out, arrange or participate in any irresponsible promotions in relation to the premises. This responsible person, in relation to licensed premises, is any member or officer of the club or relevant premises who is present on the premises in a capacity which enables him to prevent the supply in question.

Irresponsible promotions will include any one or more of the following activities, or substantially similar activities, carried on for the purpose of encouraging the sale or supply of alcohol for consumption on the premises in a manner which carries a significant risk of
leading or contributing to crime and disorder, prejudice to public safety, public nuisance, or harm to children:

a. Games or activities that are designed to encourage people to drink a quantity of alcohol within a time limit or drink as much alcohol as possible.

b. Free, fixed or discounted priced alcohol to the public or a defined group within society.

c. Free, fixed or discounted alcohol or other things given as a prize or reward for purchasing alcohol within a period of 24 hours or less.

d. Free or discounted alcohol when a sporting event is being shown on premises where the provision depends on either the outcome of a race or event or the likelihood of anything occurring or not occurring.

e. Selling/supplying alcohol in or around premises by using posters or flyers that can reasonably be considered to condone, encourage or glamorise anti-social behaviour or to refer to the effects of drunkenness favourably.

2. Directly dispensed alcohol

“The responsible person shall ensure that no alcohol is dispensed directly by one person into the mouth of another (other than where that other person is unable to drink without assistance by reason of a disability).”

3. Free tap water

“The responsible person shall ensure that free tap water is provided on request to customers where it is reasonably available.”

4. Age verification

The premises licence holder or club premises certificate holder shall ensure that an age verification policy applies to the premises in relation to the sale or supply of alcohol.

The policy must require individuals who appear to the responsible person to be under 18 years of age (or such older age as may be specified in the policy) to produce on request, before being served alcohol, identification bearing their photograph, date of birth and a holographic mark.

It should also be noted that this condition also applies to licences and certificates which permit the supply of alcohol only for consumption off the premises.
This should be considered when entering such premises, as police officers should not be seen to condone licensing breaches.

5. **Minimum measures available**

The responsible person must ensure that if served on the premises (other than alcoholic drinks sold or supplied having been made up in advance ready for sale or supply in a securely closed container) the following drinks will be available in specified measures, namely:

- Beer or cider: ½ pint
- Gin, rum, vodka or whisky: 25 ml or 35 ml; and
- Still wine in a glass: 125 ml.

They must also ensure that customers are made aware of the fact that they are available in those measures.
2. Drugs Offences

Unless stated otherwise, the powers in this section are applicable to police officers only.

The misuse of drugs is a problem of modern society. There are many reasons why people take drugs ranging from the wish to rebel or shock, to belonging to a group, to escaping problems or simply because it appears to be pleasurable.

In addition to the potential damage to the individual’s health, there are wider social and criminal implications resulting from drug-influenced behaviour or crimes such as burglary and prostitution. Such crimes are often undertaken to finance drug addiction.

Drug misuse is an increasing problem that is being tackled through a variety of approaches such as:

- reducing supplies
- increasing the effectiveness of police and customs enforcement
- maintaining effective deterrents and controls
- developing prevention and education strategies
- improving treatment and rehabilitation

2.1 The risks of drug abuse

All drugs are inherently dangerous, but their risks increase dramatically when misused. There is also a wide variation in the effect a drug will have on individual users and the effect may vary on different occasions. When combined with alcohol, mixed with other drugs or taken in an excessive dose, the result can be fatal. Returning to a drug after a period of abstinence may result in an inadvertent overdose because tolerance for the drug has declined.

The primary effect of a drug may be psychological, physical or both. Often there is a secondary, sometimes unacknowledged, effect in diminishing coordination, for example when driving or operating machinery. This creates an additional risk.
The injecting of drugs increases dependence and increases overdose risks; there is also the danger of contracting hepatitis and HIV from shared syringes. Injecting powders or crushed tablets, liquid or gel not meant for injection can cause infections, abscesses and gangrene at the site of injections. Un-dissolved particles can also be carried to the heart and lungs.

**Drug dependence**

A compulsion to take a drug repeatedly is known as dependence. Drug dependence can be physical or psychological. The term ‘dependence’ is used rather than ‘addiction’ because of the emotive overtones of the latter.

Psychological dependence involves such a strong desire for the sensations the drug brings, such as elation, stimulation, sedation or hallucinations, that the drugged state is preferred. Repeated usage may be needed to maintain the experience. Any attempt to give up the drug results in depression.

In some cases, the body builds a resistance to the drug, or tolerance, and the size of the dose then has to be increased to achieve the same effect. Some drugs taken over long periods cause actual changes in the body until it cannot physically perform if the drug is stopped. Without it, the person may become ill and experience withdrawal symptoms. Increased dosages may be needed. This is physical dependence.

**Withdrawal**

If there is persistent use of the drug, and it is withdrawn the user suffers what is known as ‘withdrawal symptoms’. Withdrawal can be painful and dangerous, with symptoms from nausea to coma. Dependence can be cured only by lengthy and specialised treatment.

Withdrawal symptoms suffered by drug users may include:

- nervousness, restlessness and an air of anxiety and desperation, yawning, running eyes and nose, enlargement of pupils, muscle-twitching
- severe aches in the back and legs, hot and cold flushes, ‘goose-bumps’, cramps, vomiting and diarrhoea
- loss of appetite, weight and sleep
- increase in breathing rate, blood pressure, and temperature
Symptoms vary according to the drugs taken, but they usually appear about 8-12 hours after
the last dose. They increase for 36-72 hours and diminish gradually over 5-10 days. Always
bear in mind that these may also be symptoms of a range of illnesses; do not assume that
anyone exhibiting them has been misusing drugs.

**Treatment**

A person suffering either an overdose or withdrawal from drugs should be regarded as being
seriously ill and must be treated accordingly.

Where such persons are found in the street, public places or places of employment, they
should be taken to hospital by ambulance. If the person is at home, call their doctor. If a
person in custody at the station shows such symptoms, inform the custody officer at once.

As a police officer, it will not normally be possible for you to confirm whether a person has
been taking drugs on sight alone. However, certain signs may come to your notice which
could suggest that drugs have been taken or misused.

If the intake of drugs is moderate, you may not be able to detect anything unusual unless
you know the person very well. It can be a very similar situation to that of drunkenness and
some aspects of mental ill health or physical disability, e.g. speech problems following a
stroke. Abnormal behaviour attracts the attention and investigation may reveal the cause.

**Control of drugs**

Drugs subject to legal control are generally of two kinds. They may be addictive, that is to
say, the user becomes dependent on them either physically or mentally; or they may be
dangerous to life, but have some perceived pleasing effect which leads people to misuse
them. Some controlled drugs are both addictive and dangerous, for example heroin.

Some drugs may be dispensed by doctors for legitimate purposes, obtained on prescription,
known as ‘prescribed drugs’. Their use without proper supervision is also termed ‘misuse'
and is the subject of legislation.

The object of the law is to protect the persons involved, and to protect society against those
who make or deal in drugs for misuse by others. The law does this by controlling drugs
contained in those substances or products which are capable of becoming misused, and
which may destroy the constitution of the user. These drugs are listed in the Misuse of Drugs
Act 1971 and the Misuse of Drugs Regulations 2001, and are known as controlled drugs.
Misuse of Drugs Act 1971

This Act creates many offences in relation to illegal manufacturing, importing, supplying and possession of controlled drugs. However, during the course of your duties you are most likely to encounter offences concerned with the possession of controlled drugs and these notes will concentrate on that particular aspect.

2.2 Recognition of drugs

It is extremely difficult to differentiate between ‘controlled drugs’, ‘non-controlled drugs’, and other ‘harmless substances’. Accompanying circumstances, such as apparent drunkenness without any smell of intoxicants, may create a reasonable suspicion that controlled drugs are being used or possessed. Always bear in mind that a person may be experiencing some illness or mental ill health which may cause similar symptoms.

However, an essential part of the evidence in any offence will be to prove that the substance is a controlled drug, or contains a controlled drug. Consequently, substances which are suspected of being a controlled drug must be analysed in a laboratory since they cannot be identified positively by visual examination alone.

Any preparation, or product, containing a controlled drug is deemed to be a controlled drug for the purposes of this legislation.

Never try to make your own identification by tasting, touching or sniffing a suspect substance; your opinion is of no evidential value and the practice is extremely dangerous.

The controlled drugs are listed in Schedule 2 of the Misuse of Drugs Act 1971, and Regulations made under the Act. However, the list can be altered when necessary by the issuing of a statutory instrument.

A list of the most commonly encountered drugs currently controlled under the Misuse of Drugs Legislation can be found on the Home Office website by searching ‘Controlled Drugs List’. The list is in alphabetical order and shows their respective classifications under both the Misuse of Drugs Act 1971 and the Misuse of Drugs Regulations 2001.

**Although the list is extensive it is not exhaustive.** In the event of a substance not being listed you should refer to the notes in Schedule 2 to the Misuse of Drugs Act 1971 and Schedules 1 to 5 to the Misuse of Drugs Regulations 2001.
Temporary Class Drugs

From 15 November 2011 the Misuse of Drugs Act 1971, was amended so it allowed a new psychoactive substance causing sufficient concern about potential harms to be placed under a temporary class drug order.

Temporary class drug orders enable the government to act faster, on consideration of initial advice from the Advisory Council on the Misuse of Drugs (ACMD), to protect the public against emerging harmful new psychoactive substances while full expert advice is being prepared.

Some temporary class drug order provisions are:

- The drug is not already controlled under the Act (as class ‘A’ ‘B’ or ‘C’).
- A temporary class drug order will come into immediate effect and last for up to 12 months, subject to Parliament agreeing to it within 40 sitting days of the Home Secretary making the Order.
- Will be classed as a Controlled Drug.
- With the exception of the possession offence, all other offences under the Misuse of Drugs Act 1971 will apply.

Controlled drugs that are available as medicinal products

Many controlled drugs are available as medicinal products. The Medicines Act 1968 controls the way medicines are made and supplied. The Act divides them into prescription-only medicines (those which can only be supplied legally on a doctor’s, dentist’s or midwife’s prescription), pharmacy medicines (those which must be sold or supplied at a registered pharmacy and under the supervision of a pharmacist) and those on the general sales list, usually the least harmful, which may be sold in small quantities by supermarkets and other stores.

2.3 Drugs classification

Note – some drugs may be reclassified from time to time and the information here may be subject to change. (See Schedule 2 of Misuse of Drugs Act 1971, or as subsequently amended.)
A 3-tier system of classification (A, B and C), which provides a framework within which maximum criminal penalties are set with reference to the harm a drug has or is capable of having when misused, and the type of illegal activity undertaken in regard to that drug. With classification 'A' is the most toxic. Most of the common drugs fall into Classes ‘A’ and ‘B’, but many of them you may never have heard of and would not be able to recognise them.

<table>
<thead>
<tr>
<th>Class A</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Narcotics</strong></td>
</tr>
<tr>
<td>(including opium, morphine and heroin)</td>
</tr>
<tr>
<td>Heroin (smack, junk) is a powder that varies in colour from a dark chocolate brown through beige to white. It can be sniffed, smoked or melted and injected. It is an opium-based painkiller, mentally and physically addictive; it gives a feeling of contentment and invincibility, but can cause nausea and overdosing can be fatal.</td>
</tr>
<tr>
<td><strong>Stimulants</strong></td>
</tr>
<tr>
<td>Cocaine (coke) is available as a white powder which is usually sniffed or crack (base, rocks), a crystal form which can be smoked. Both have short-lived effects. It gives a feeling of confidence and energy and can be both mentally and physically addictive.</td>
</tr>
<tr>
<td><strong>Hallucinogens</strong></td>
</tr>
<tr>
<td>The commonest is LSD (acid), a psychedelic drug which causes 6-14 hour hallucinogenic trips which can be wonderful or terrible. It is taken in the form of a pill or tab of impregnated blotting paper. LSD has not been shown to be physically addictive and appears to cause no physical damage.</td>
</tr>
<tr>
<td>Ecstasy (E, disco biscuits) consists of tablets or capsules containing MDMA, and is often mixed with other substances. Effects include euphoria, benevolence and heightened perceptions, but it can cause nausea, dehydration and anxiety. It does not appear to be physically addictive; recorded deaths in persons who have taken Ecstasy have been mainly from respiratory collapse.</td>
</tr>
</tbody>
</table>
Fungus (of any kind) which contains the hallucinogenic drug psilocin or tablets made from this drug are class A drugs. This means that the fungi, commonly known as magic mushrooms of any kind, including fresh magic mushrooms, fall into this category. Effects depend on the quantities eaten, but range from happiness to hallucinations. There are exceptions from the offence of possession of magic mushrooms. These are mentioned later in your notes.

### Class B

#### Amphetamines

These drugs (‘speed’ or ‘pep pills’) stimulate the activity of the central nervous system and raise energy levels but are followed by lethargy and depression. They can be psychologically addictive. They are widely used and not difficult to obtain. The stimulant is sniffed or injected in powder form or ingested as a pill. Note that amphetamines move into Category ‘A’ when prepared for injection.

#### Barbiturates

Some barbiturates fall into Class B because they contain amphetamine in the drug formula. Such barbiturates are commonly known as ‘uppers’ and include acetyldihydrocodeine, codeine, dihydrocodeine, etholmorphine and methaqualone. All barbiturates contain a substance called barbituric acid, which is mixed with other chemicals.

#### Cannabis

Known as dope, weed, draw, smoke, spliff, bush, blow, a joint, ganja, hash, marijuana, pot etc. is one of the more common of the unlawful drugs. The brown resin is usually smoked when mixed with tobacco in reefers or joints, or cooked in food. The leaf is also smoked. Effects include relaxation, a sense of well-being, heightened perceptions and paranoia. Cannabis is not physically addictive, but users can become psychologically dependent.
Long-term smoking can contribute to respiratory diseases. Some users go on to be regular users of Class A drugs such as heroin.

**Mephedrone**

Mephedrone and the derivatives of Cathinone have led to the deaths of several young people prompting the Home Office to include them in class ‘B’. They have a similar effect to amphetamines causing anxiety, paranoid states and over-stimulation of the cardiovascular and nervous systems that can lead to heart and circulatory problems along with agitated/paranoid states with the further risk of hallucinations.

<table>
<thead>
<tr>
<th>Class C</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Barbiturates</strong> not covered in Class B fall into Class C drugs and are commonly known as ‘downers’. All drugs whose names end in the letters ‘pam’, e.g. temazepam, diazepam are such barbiturates, as are buprenorphine and dextropropoxyphene (pain relievers).</td>
</tr>
<tr>
<td><strong>Benzodiazepines</strong> (tranquillisers such as Valium, Librium, and Mogadon) are also Class C, and some are used by injection in place of heroin, or used to offset the effects of ecstasy. Particular problems have arisen because the drug is available as a gel which is melted and injected. It then solidifies, causes blockages, abscesses and eventually, gangrene.</td>
</tr>
<tr>
<td><strong>Other Class C drugs</strong> include diethylpropion, phentermine and mazindol, used as ingredients for appetite suppressers.</td>
</tr>
<tr>
<td><strong>Gammahydroxy-butyrate (GHB)</strong> It is sometimes referred to as a ‘date rape drug’. It is produced as a white powder, which is dissolved into water. In small doses it acts as an ‘upper’. In larger doses the anaesthetic effect takes hold and can lead to respiratory problems. It is potentially lethal when mixed with other substances, for example, alcohol.</td>
</tr>
</tbody>
</table>
Anabolic and androgenic steroids and certain other drugs used by athletes to increase muscle bulk and strength and enhance physical performance. Prolonged use of these substances is thought to lead to heart disease and liver damage, paranoia and increased aggression.

The body’s defences against physical stress and over-exertion are also suppressed by the drug, resulting in overheating or extreme fatigue, which may prove fatal. Although not thought to be physically addictive, some users become psychologically dependent on steroids, believing that their level of physical performance will drop without them.

Other drugs you may encounter

Amyl and butyl nitrate (‘poppers’) in the form of a liquid which are inhaled. Both are legally available as an emergency treatment for angina attacks and as an antidote to cyanide poisoning. The vapour is inhaled, causing an immediate rush as the heart pumps rapidly and can enhance sexual pleasure. Side effects include nausea and headaches and they can be dangerous for those with heart problems or anaemia. Medical preparations based on these drugs are not readily available, but other products are available through mail order and sex shops, under names such as ‘Liquid Gold’ and ‘Hardware’.

There are currently no controls on these substances or preparations.

Other prescribed tranquillisers and depressants may be used for experimentation by young people and cause psychological dependence for long-term users. These drugs used to be easily recognisable by their brand names, but, where generic equivalents exist, these are often prescribed and this has made visual identification more difficult and less reliable.

Some ‘over-the-counter’ preparations such as antihistamines and opiates (which contain low concentrations of morphine and codeine) such as headache or cough treatments can be damaging if misused in frequent and excessive amounts.

Equipment for administering drugs

Evidence that drugs are being used may be indicated by the presence of any of the following paraphernalia:

- scorched tinfoil, tinfoil tubes and matchbox covers
• syringes and needles
• scorched spoons, ligatures and citric acid or lemon juice
• small mirrors, razors and straws
• tiny spoons and small containers
• cigarette papers and home-made cigarettes
• bloodstained cotton wool or other material
• soft drink cans, glass and plastic bottles, glass tubes, butane gas torch, matches and perforated tinfoil
• square folds of paper which may contain powder
• cling film, tinfoil and small self-sealing plastic bags

2.4 Powers to search for and seize drugs

Powers to search and seize under Section 23 of the Misuse of Drugs Act 1971

1. A constable or other person authorised in that behalf by a general or special order of the Secretary of State (or in Northern Ireland either of the Secretary of State or the Ministry of Home Affairs for Northern Ireland) shall, for the purposes of the execution of this Act, have power to enter the premises of a person carrying on business as a producer or supplier of any controlled drugs and to demand the production of, and to inspect, any books or documents relating to dealings in any such drugs and to inspect any stocks of any such drugs.

2. If a constable has reasonable grounds to suspect that any person is in possession of a controlled drug in contravention of this Act or of any regulations [or orders] made thereunder, the constable may:

a. search that person, and detain him for the purpose of searching him

b. search any vehicle or vessel in which the constable suspects that the drug may be found, and for that purpose require the person in control of the vehicle or vessel to stop it
c. seize and detain, for the purposes of proceedings under this Act, anything found in the course of the search which appears to the constable to be evidence of an offence under this Act.

3. In this subsection “vessel” includes a hovercraft within the meaning of the Hovercraft Act 1968; and nothing in this subsection shall prejudice any power of search or any power to seize or detain property which is exercisable by a constable apart from this subsection.

Example:

- A police officer in uniform stops a car at the roadside in order to check the driver’s licence and the vehicle’s insurance and MOT. As the officer approaches the vehicle they see the driver also has two passengers in the vehicle who appear to be bending down behind the driver’s seat. The driver switches off the engine and opens the window. As the officer bends down to the window to speak to the driver they notice the passengers’ and driver’s eyes are glazed and there is a strong smell of cannabis coming from inside the vehicle. The officer decides to detain and search the driver, the passengers and the vehicle as they suspect they may find some cannabis. During the search they do not find anything that appears to be cannabis but do find small wraps containing white powder under the seats. They suspect this substance may be a controlled drug and seize the wraps and their content as evidence of an offence. The officer subsequently finds it necessary to arrest the three occupants on suspicion of possession of a controlled drug and continues the investigation.

4. A person commits an offence if he:

1. intentionally obstructs a person in the exercise of his powers under this section; or

2. conceals from a person acting in the exercise of his powers Section 23(1) any such books, documents, stocks or drugs as are mentioned in that subsection; or

3. without reasonable excuse (proof of which shall lie on him) fails to produce any such books or documents as are so mentioned where their production is demanded by a person in the exercise of his powers under that subsection.

The power of search and seizure under Section 23 of the Misuse of Drugs Act 1971 requires suspicion of possession of a controlled drug – suspicion of drug abuse is not sufficient. The
effective use of the power can provide the necessary evidence to effect an arrest, but it must be used properly.

Example:

- The appearance of a known offender leaving a house frequented by drug users would not by itself constitute ‘reasonable grounds’.
- People’s behaviour or the observation of articles believed to be drugs changing hands would provide reasonable grounds to suspect possession of controlled drugs.

You must be prepared to give evidence justifying your grounds for reasonable suspicion. There must be something such as their actions, their conversation or the circumstances which afford grounds for suspicion.

Remember that your powers of search under the Police and Criminal Evidence Act 1984 (PACE) are not affected by the power under the Misuse of Drugs Act 1971. Under PACE, this power of search will apply wherever you have a lawful right to go. If possession is suspected on premises where you have no lawful access, inform your supervisor so that steps may be taken to make an application for a search warrant.

**Power to seize drugs whilst conducting a search for alcohol, tobacco or other items (PCSOS Only)**

Under Paragraphs 7B of Schedule 4 to the Police Reform Act 2002, you have a power seize unconcealed drugs or drugs found when searching for alcohol, tobacco or other items if you reasonably believe that the person is in unlawful possession of them. However, you must retain the drugs until a constable instructs you what to do with it.

If you find drugs in a person’s possession or have reason to believe that a person is in possession of drugs and reasonably believe such possession is unlawful then you may require that person’s name and address.

**Code A of the Codes of Practice to the Police and Criminal Evidence Act 1984**

You must comply with Code A of the Codes of Practice to the Police and Criminal Evidence Act 1984 when searching people for drugs. In accordance with Paragraph 3.5 when carrying out a search in public it says:
“There is no power to require a person to remove any clothing in public other than an outer coat, jacket or gloves, except under Section 60AA of the Criminal Justice and Public Order Act 1994 (which empowers a constable to require a person to remove any item worn to conceal identity). [See Notes 4 and 6] A search in public of a person’s clothing which has not been removed must be restricted to superficial examination of outer garments. This does not, however, prevent an officer from placing his or her hand inside the pockets of the outer clothing, or feeling round the inside of collars, socks and shoes if this is reasonably necessary in the circumstances to look for the object of the search or to remove and examine any item reasonably suspected to be the object of the search. For the same reasons, subject to the restrictions on the removal of headgear, a person’s hair may also be searched in public (see paragraphs 3.1 and 3.3).

However, you must take into account the obvious dangers when carrying out searches of this nature to guard against, for instance, injuring yourself on needles.

Searching for drugs often means you will need to conduct more thorough searches, for example, asking a person to take off a T-shirt. If this is necessary, it must be done out of public view, for example, in a police vehicle or police station if there is one nearby (PACE 1984 Code A para 3.6). Searches which may involve exposure of intimate parts of the body must only be carried out at a nearby police station or other location which is out of public view (but not a police vehicle) (PACE 1984 Code A para 3.7).

Remember also that from the first moment that you are seen approaching, a suspect who is carrying drugs will be looking for an opportunity to get rid of them. It is not an easy matter to prevent this from happening. However, an attempt to get rid of the substance is good evidence.

The power to seize anything that you believe to be evidence of any offence includes not only the actual substance, but also anything you suspect may contain a controlled drug. It can also apply to hypodermic syringes, spoons used to heat the water to dissolve certain drugs etc.

**Personal safety while searching drug users**

Drug users who inject are possible sources of infection. Be particularly careful not to prick yourself with an unguarded needle when searching. Pat the outside of pockets first to detect the presence of a syringe. There is a serious risk of contracting serious diseases such as HIV or hepatitis by contact with the blood and in rare cases from contact with saliva of an
infected person. The saliva or blood will have to enter your body by eyes or mouth or into your bloodstream through a cut or abrasion.

If you do puncture your skin, or blood or saliva has entered your eyes, mouth or through an abrasion, inform your custody officer at once and seek medical attention.

**Doubtful cases**

There may be occasions when you have evidence as to the name of a drug, but are uncertain as to whether it is controlled. You should contact your force drugs liaison officer and they will be able to advise you. Some drugs, although not controlled, are misused. Always bear in mind that there is a possibility that the drugs have been stolen or obtained by deception.

**Treatment of suspects and detainees**

Until the suspected substance has been analysed by the laboratory, no person will be charged with any offence, except in the case of cannabis where an experienced officer’s evidence as to the substance will suffice for the purpose of charging.

Normally, after investigating to satisfy themselves that the arrest was lawful, the custody officer may release the detainee to return at a later date when the results of the analysis will be available.

**Theft of drugs**

A wide range of controlled drugs is available from doctors, dentists and midwives and chemist shops are regularly attacked with a view to obtaining blank prescriptions. If you are in doubt at any time about the means by which a drug was obtained and if you suspect it to be a controlled drug, seek the advice of a supervisor. The manner in which the suspect reacts to you may tell you a lot.

**2.5 Drugs possession offences, cannabis procedures and drugs testing**

**The offence of possession of a controlled drug – Sections 5(1) and 5(2) Misuse of Drugs Act 1971**

Note – there are regional variations with this law and various sections of it depending on whether you are in England and Wales or Scotland.
1. Subject to any regulations under section 7 of this Act for the time being in force, it shall not be lawful for a person to have a controlled drug in his possession.

2. Subject to section 28 of this Act and to subsection (4) below, it is an offence for a person to have a controlled drug in his possession in contravention of subsection (1) above.

2A. Subsections (1) and (2) do not apply in relation to a temporary class drug."

Proving that the person had possession of the substance could be established in many ways such as by admission and by handing it to you, by your finding it in a search of clothing or possessions, or by questioning and observation. Evasive answers to questions, carrying tablets loose in a pocket or in a twist of paper will all help you to draw the inference that the person is not in lawful possession. In any event, you must prove that:

- the accused had the substance in their possession
- the accused knew they had something in their possession
- the something in their possession was a substance which was a controlled drug
- the accused had no authority such as a doctor’s prescription to possess it

Where a person possesses a container that contains controlled drugs and knows that there is something in the container, the defendant is taken to be in possession of the contents of the container. The prosecution does not need to prove that the defendant knew the contents were controlled drugs.

The only way to prove a substance is a controlled drug is when a forensic scientist says it is after having been analysed in a laboratory.

If it is claimed that the drug was obtained on prescription, checking the following may help to determine whether this is the truth:

- The name of the doctor
- Where it was dispensed
- What is written on the container
- Whether the name on the container matches with that supplied to you by the person.
Lawful possession

Regulation 6(7) of the Misuse of Drugs Regulations 2001 states that certain people may possess any controlled drug when they are acting in the course of their duty. They include:

a. a constable when acting in the course of his duty as such
b. a person engaged in the business of a carrier when acting in the course of that business
c. a person engaged in the business of a postal operator (within the meaning of Part 3 of the Postal Services Act 2011) when acting in the course of that business
d. an officer of customs and excise when acting in the course of his duty as such
e. a person engaged in the work of any laboratory to which the drug has been sent for forensic examination when acting in the course of his duty as a person so engaged
f. a person engaged in conveying the drug to a person who may lawfully have that drug in his possession

In addition to the above, a person may lawfully possess controlled drugs:

- which have been prescribed to them
- when engaged in conveying the drug to a person who may lawfully have that drug in their possession, e.g. someone lawfully conveying the drugs to one of the above, for example someone finds some drugs on the street and takes them to a police station

Note: Cannabis and LSD cannot be prescribed to any person.

Issuing a penalty notice for disorder for the offence of simple possession of cannabis

For anyone aged 18 or over, an offence under Section 5(2) of the Misuse of Drugs Act 1971, of simple possession of cannabis, cannabis resin, cannabinol, cannabinol derivatives or any ester or ether of cannabinol can be dealt with by way of a penalty notice for disorder, under Section 1(1) of the Criminal Justice and Police Act 2001.

Cannabis warning

The ACPO Guidance on Cannabis Possession for Personal Use (Revised Intervention Framework 28 January 2009) outlined the procedures when the police find a person in possession of a small amount of cannabis.
An officer will have three courses of action available:

1. Cannabis warning
2. Penalty Notice for Disorder (PND)
3. Arrest

The options were shown in the order of escalation that would be expected, taking into account all the aggravating factors. If none of the aggravating factors were present the expectation was that a Cannabis Warning will be issued. However, you should check what your force policy is in this regard.

**Aggravating Factors**

- **Public place or view** – smoking of cannabis in a public place or view risks undermining the illegal status of possession of a controlled drug. Examples of smoking in public view would include at a football match, on public transport, in a park, in the street, in or near a public house, club etc.

- **Locally identified policing problem** – there may be circumstances which are causing a local policing problem or community concern, such as the fear of anti social behaviour associated with the use of cannabis, e.g. a disorder ‘hotspot’ that generates frequent calls for service to deal with anti-social behaviour.

- **Protecting young people** – where possession of cannabis by others may create a particular risk to young people, e.g. where a person is in possession of cannabis inside or in the vicinity of premises frequented by young people such as schools, youth clubs or play areas.

- **Repeat or persistent offenders** – the illegal status of cannabis would be undermined if a person who is known locally to continually commit offences and to have a complete disregard for the law were to be issued a cannabis warning or penalty notice for disorder.

- **Impact on the offender** – other considerations could include:
  
  - What impact a decision to issue a Cannabis Warning or PND may have on the offender?
  - Does the person understand the seriousness of the offence?
  - Will this person benefit from this course of action?
Will this person take heed of a cannabis warning or PND?

Is there evidence of previous convictions or offending behaviour?

**Adult Offenders**

The escalation framework should only be considered when all the conditions below are present:

- An adult, aged 18 years or over
- Non-vulnerable
- Capable of understanding the significance of questions put to them or their replies
- Not suspected of being under the influence of drink or drugs at the time that the warning or PND is to be issued
- In possession of a small amount of cannabis, consistent with personal use
- Their personal details have been satisfactorily verified
- They admit the offence – (for Cannabis Warning only)

**Restrictions to issuing a cannabis warning**

No more than one Cannabis Warning should be issued and only where the following applies:

- No previous record of Cannabis Warning
- No previous record of a PND being issued
- No previous convictions
- Not known to the officer locally as a persistent offender
- No aggravating circumstances
- Compliant with procedure

If any of the above does not apply to the offender then a Cannabis Warning should not be issued and you should escalate your action.

A Cannabis Warning cannot be issued by PCSOs.
Process for a Cannabis Warning

- Investigate the circumstances surrounding the alleged possession, including any lawful excuse.
- Eliminate any suspicion of a more serious offence, such as possession with intent to supply. (The amount of cannabis in possession of the offender is irrelevant if there is other evidence of intent to supply.)
- Seize cannabis and secure evidence according to local procedure and compliance with PACE and its Codes of Practice.
- Complete contemporaneous notes of the incident that are PACE compliant and cover the points to prove for the offence, in line with local procedures.
- Complete local recording systems, such as stop/search forms, property seized logs and criminal intelligence reports.

Ensure a record is made of the crime within local crime recording procedures. Under Home Office counting rules this will be treated as a sanctioned detection, providing the correct procedures have been followed.

If the officer decides to proceed with a Cannabis Warning, the offender should be warned that:

- A record of the investigation will be made at the police station.
- The offence of possession will be recorded against them, for statistical purposes, as a detected crime, but that procedure does not constitute a criminal record against them.

Restrictions on issuing a Penalty Notice for Disorder (PND)

If the offender has already received a PND for cannabis possession on a previous occasion then a second PND cannot be issued and the only option is to arrest.

If the offender has never received a Cannabis Warning, but has been issued one PND for possession, you cannot de-escalate back to a Cannabis Warning and the only option is to arrest.

You may use operational discretion to decide that, although the offender has never received a Cannabis Warning, due to the circumstances you should immediately escalate to the issue of a PND or arrest.
Where a non-vulnerable adult does not admit the offence then a PND may only be issued if you have sufficient evidence that the offence has been committed.

If it is decided the issue of a PND is appropriate it must be issued in line with current force policy and procedures.

PNDs for possession of cannabis are recorded on the Police National Computer.

A designated PCSO can also issue a PND for possession of cannabis.

**Arrest**

You may use operational discretion to decide that although the offender has never received a Cannabis Warning or a PND for possession, due to the circumstances of this offence you can escalate directly to arrest.

If an arrest is appropriate Section 24 of PACE provides the power to arrest for the offence.

**Drug Testing on Arrest (DToA)**

All police force areas in England and Wales are able to conduct Drug Testing on Arrest (DToA). Drug testing is one of a suite of tools and powers used as part of the Drug Interventions Programme (DIP).

Anyone arrested (or charged) with a specific ‘trigger offence’ can be drug-screened for use of Class ‘A’ drugs. An Inspector’s authority is not required to carry out a drugs screening test.

**Trigger Offences**

Offences under the following provisions of the Misuse of Drugs Act 1971 are trigger offences if committed in respect of a specified Class ‘A’ drug:

- Section 4 restriction on production and supply of controlled drugs
- Section 5 (2) possession of controlled drug
- Section 5 (3) possession of controlled drug with intent to supply

Testing of those arrested for or charged with any other (non-trigger) offence needs an Inspector’s authority. For a non-trigger offence, you must have reasonable grounds to suspect that misuse of any specified Class ‘A’ drug caused or contributed to the offence.
Note: The drug test is a screening tool only and the result cannot be used as evidence against the detainee.

Following a positive drug test, the person is legally required to attend (and remain) at an assessment with someone from the local Criminal Justice Integrated Team (CJIT). The CJIT worker will help the drug user seek treatment and other support.

There are also legal sanctions for those unwilling to address their drug or drug-related offending, for example a restriction on bail conditions.

A DIP condition can be attached to a police caution as an alternative to prosecution.

Beyond simple possession

There will be circumstances where it is appropriate to arrest for possession of cannabis. This is very much left to the discretion of officers who will be expected to take into account the prevailing circumstances, together with arrest ‘reasons’ in deciding whether to arrest or not. An officer may consider arrest in the following situations. Remember these are guidelines and you should always apply the necessity criteria before deciding to make an arrest:

- **If it is smoked in public view**
  The smoking of cannabis in public view is not in the spirit of re-classification. Such flagrant ignorance of the law has the potential of undermining the illegal status of possession of a controlled drug.

- **When a person repeatedly offends**
  A similar undermining could occur where, on a local basis, a person is known to be repeatedly dealt with for possession of cannabis.

- **If there is a local policing problem linked to cannabis use**
  There may be circumstances, such as fear of public disorder associated with persons who are in possession of cannabis under circumstances that are causing a locally identified policing problem that cannot be effectively dealt with by other powers. Generally a local policing problem will be identified through intelligence or community concerns.

- **If in possession of cannabis and close to youth premises**
  There may be occasions where the possession of cannabis may create a risk to young people inside or in the vicinity of premises frequented by young people, for example, schools, youth clubs, and play areas.
• If the user is a vulnerable person

You should arrest any user who is aged 17 years or under. See the below explanatory notes on youth offenders and vulnerable persons.

Youth offenders

The Crime and Disorder Act 1998 provides a statutory framework for youth offenders to be dealt with in a different way to adult offenders, using the options of a youth caution or youth conditional caution.

Youth offenders will continue to be dealt with through the Crime and Disorder Act 1998 legislation rather than through the ACPO (2003) Cannabis Enforcement Guidelines and so should be dealt with at the police station. In practice this means that the police officer should arrest persons aged 17 years or under who are in possession of cannabis for personal use.

Offenders under 10 years

The age of criminal responsibility is 10 years; therefore someone below this age cannot be prosecuted for any offence. When children under 10 years of age are found in possession of cannabis this should be considered an ‘at risk’ incident prompting the appropriate referrals to other agencies through the child protection team.

Vulnerable persons

The term ‘vulnerable person’ includes a person who may be mentally disordered or incapable of understanding the significance of questions or replies, or otherwise mentally vulnerable. For their own interest and personal welfare they should be arrested. All case disposal options, including formal warning, are available for consideration by the custody officer.

The terms ‘mentally disordered’ and ‘mentally vulnerable’ are used to correctly reflect legislation. Outside the legislative world the term ‘mental ill health’ is preferred.

Specific defence to unlawful possession – Section 5(4) Misuse Drugs Act 1971

“A person found to have unlawful possession of a controlled drug, has a defence if it can be proved that:

• knowing or suspecting the drug to be a controlled drug, they took possession of it for the purpose of preventing another person from committing, or continuing to commit an
offence in connection with that drug and that, as soon as possible after taking possession of the drug, they took all steps as were reasonably open to them to destroy the drug, or to deliver it into the custody of a person lawfully entitled to take custody of it; or

- knowing or suspecting it to be a controlled drug, he took possession of it for the purpose of delivering it into the custody of a person lawfully entitled to take custody of it and that as soon as possible after taking possession of it he took all steps as were reasonably open to him to deliver it into the custody of such a person.”

Examples:

- A father finds his son in possession of a controlled drug and takes it from him. He then immediately throws the drug into the fire, or he finds his son in possession of a controlled drug and takes it from him. He then immediately takes the drug to a local police station.

- A schoolteacher might come into possession of some cannabis abandoned by a pupil in panic during a spot check by staff. The teacher is protected for the purposes of handing it, say, to their local school’s liaison officer.

So, anyone who temporarily handles any controlled drug is acting in accordance with the law as long as they act promptly and with the correct motives. You would decide based on all the circumstances.

2.6 General Defences (Possession) – Section 28 Misuse of Drugs Act 1971

In addition to the defence above, the Act also provides three general defences, namely:

- lack of knowledge of the alleged fact
- lack of knowledge of a controlled drug
- the belief that it was a drug he or she was entitled to produce, supply, and possess

These defences apply to the offences of:

- unlawful supply of a controlled drug
- unlawful possession of a controlled drug
• possession with intent to supply
• unlawful production of a controlled drug
• unlawful cultivation of cannabis, and
• certain activities related to opium

**Lack of knowledge of the fact**

The first defence is based upon a person's lack of knowledge of a fact, which the prosecution must prove to secure a conviction, e.g. unlawful possession.

Defendants must prove three things:

• that they did not know the existence of some fact, and
• that they lacked suspicion of that fact, and
• that they had no reason to suspect the existence of that fact

**Example:**

• Two men are walking together in the street when a police constable approaches them. One is carrying a small packet of cannabis and, to avoid being found in possession of it, he slips the packet into the other's pocket without his knowledge. 'Knowledge' is a fact the prosecution have to prove for an offence of unlawful possession. In this case the person would not be guilty.

**Lack of knowledge of a controlled drug**

The second defence is based upon a person's possession of a controlled drug. In this instance, to secure a conviction the prosecution must prove that the substance or product in question was a particular controlled drug. Defendants will have a defence, if they can prove three things:

• that they did not believe it was a controlled drug, and
• that they did not suspect it was a controlled drug, and
• that they had no reason to suspect it was a controlled drug
Example:

- A man gives his employee a packet to deliver, informing her it contains tobacco. The package is found to contain cannabis. The employee did not know it was cannabis, did not suspect it was and had no reason to suspect it; therefore she would not be guilty.

If an offender purchased what she thought to be cocaine and forensic analysis revealed it to be another controlled drug, would she be able to rely on this defence? The answer is no. If she believed the substance to be a controlled drug, then it does not matter which type of controlled drug it turns out to be.

What is in the person’s mind is important here.

**Belief that it was a drug he or she was entitled to possess**

The person must prove that:

- he or she believed it was a controlled drug or a particular controlled drug and

- they believed the substance or product in question to be a controlled drug, or a controlled drug of a description, such that, if it had in fact been that controlled drug or a controlled drug of that description, he would not at the material time have been committing any offence to which this section applies.

These circumstances would be quite unusual, but registered drug users have been known to claim ignorance when in possession of a drug other than that which they are lawfully permitted to possess. A mistake by a dispensing chemist would be the only sort of example that might apply here.

**Exceptions from the offences of possession of magic mushrooms**

There are exceptions from the offence of possession of magic mushrooms. According to the Misuse of Drugs Regulations 2001, Regulation 4A the exceptions are:

- Where magic mushrooms are growing uncultivated.

- In other words if persons have magic mushrooms growing on their land uncultivated they do not commit the offence of unlawful possession. However, should they intend to supply those magic mushrooms they would commit the offence of possession with intent to supply a controlled drug.
• Where magic mushrooms are picked by a person who possesses them lawfully (for example as mentioned above) in order to deliver them as soon as is reasonably practicable into the custody of a person lawfully entitled to take custody of them (see above), and they remain in their possession for that purpose.

• This ensures that landowners can legally pick magic mushrooms growing on their land for the purpose of delivery and if necessary keep them, provided it is for this purpose.

• Where the magic mushrooms are picked in order to either destroy them as soon as reasonably practicable (purpose of destruction) or deliver them as soon as is reasonably practicable to a person (including a police officer) lawfully entitled to take custody of them (purpose of delivery) and they are then kept, whether by the person who picked them or by another person, for the purpose of destruction.

• This ensures that landowners can keep the mushrooms legally if they intend to destroy them. Likewise, they can also keep them legally for delivery to persons lawfully entitled to take custody of them prior to their destruction.

In addition to these exceptions the defences mentioned in Sections 5(4) and 28 of the Misuse of Drugs Act 1971 still apply.

**Your operational role**

When you are dealing with problems involving juveniles (for example family difficulties, missing from home cases, or incidents of solvent abuse), it is important to consider the possibility of drug abuse. However, do not assume that drug abuse is necessarily involved.

**Search warrants**

Where information establishes reasonable grounds for suspecting that any controlled drugs are in the possession of a person on any premises or any documentation relating to a transaction/dealing is in possession of a person on any premises, an application for a search warrant should be made under Section 23 (3) of the Misuse of Drugs Act 1971.

In order to obtain a search warrant under the Misuse of Drugs Act 1971 you will need to follow the procedure for obtaining a warrant.

You may seize any controlled drugs or evidence relating to drugs. You may use force to enter the premises if necessary, but this must be done in accordance with the PACE Codes.
of Practice such as PACE Code A which applies to the exercise of any power to search people for controlled drugs specifically included in a warrant issued under Section 23.

It is important to note that particular attention should be taken to the drafting of the warrant applied for under Section 23 as such warrants could authorise the search of premises only rather than both premises and persons.

**Additional legislation**

Additions to legislation are designed to provide further control of people and organisations which benefit from unlawful drug dealing, for example the Proceeds of Crime Act 2002. The Crown Court has an obligation to impose confiscation orders on people sentenced for drug trafficking offences specified in Schedule 2 to this Act, including drug trafficking. The order will be based upon the offender’s estimated benefits from their illegal activities and could result in appropriately levelled seizure of their assets like cars, boats and other property.

Banks and financial institutions now have a responsibility to report the details of any large money deposits which may be connected with drug trafficking. They leave themselves open to legal proceedings should any drugs investigation reveal that such large amounts are lodged with them.

If you were approached by a bank manager who suspected that one of their account holders was making regular cash deposits obtained by unlawful means, you should pass this information immediately to the specialist drugs supervisor in your local force.

**The offence of supplying articles for drug preparation – Section 9A Misuse of Drugs Act (MDA)1971**

Under Section 9A of the MDA, it is an offence for any person to supply (or to offer to supply) any article which may be used or adapted to be used (whether by itself or in combination with another article or other articles) in the administration by any person of a controlled drug to himself or another, believing that the article (or the article as adapted) is to be so used in circumstances where the administration is unlawful.

It is also an offence to supply or to offer to supply any article which may be used to prepare a controlled drug for administration by any person to himself or another believing that the article is to be so used in circumstances where the administration is unlawful is guilty of an offence.
It is not an offence to supply or offer to supply a hypodermic syringe, or any part of one.

**Drug rehabilitation requirement – Section 209 Criminal Justice Act 2003**

In relation to a community or suspended sentence order, a drug rehabilitation requirement means that during a period specified in the order (known as the treatment and testing period) the offender:

- must submit to treatment by or under the direction of a specified person having the necessary qualifications or experience with a view to reducing or eliminating their dependency on or propensity to misuse drugs, and

- must, during that period, at such times and in such circumstances as may be (subject to the provisions of the order) determined by the responsible officer or by the person specified as the person by and under whose direction the treatment is to be provided, provide samples for the purpose of ascertaining whether they have any drug present in their body.

For a court to impose such an order it must be satisfied that the offender is dependent on, or has a propensity to misuse, drugs such that it requires and may be susceptible to treatment. The court must also be satisfied that arrangements have or can be made for the intended treatment as specified in the order. Any requirements must be recommended to the court as being suitable for the offender by an officer of a local probation board or an officer of a provider of probation services.

The court must be satisfied that the offender has expressed a willingness to comply with any such requirement. The treatment for any particular period may be residential or non-residential at intervals as specified in the order.

For the purposes of this section ‘drug’ means a controlled drug as defined by Section 2 of the Misuse of Drugs Act 1971.

**Sources of help and information**

Many national and local initiatives exist which provide assistance and information, including:

- medical practitioners
- advisory services
- treatment centres
• self-help and community groups

2.7 Drugs – Supply, Importation, Production and Manufacture Offences

Misuse of Drugs Act 1971

This Act creates many offences in relation to illegal manufacturing, importing, supplying and possession of controlled drugs. During the course of your duties you are most likely to encounter offences concerned with the possession of controlled drugs but it is important that you know and are able to apply the law relating to these other areas.

Supplying a controlled drug – Section 4(3) Misuse of Drugs Act 1971

Subject to section 28 of this Act, it is an offence for a person:

• to supply or offer to supply a controlled drug to another in contravention of subsection (1) above; or

• to be concerned in the supplying of such a drug to another in contravention of that subsection; or

• to be concerned in the making to another in contravention of that subsection of an offer to supply such a drug

This offence was designed to control the activities of all those involved in dealing in drugs. It governs not only the physical act of handing over the drug but also making an offer in advance of any actual supply taking place and being concerned in any way with the arrangements to supply or offer to supply.

So this legislation also covers the intermediary who makes the arrangements, whether for a fee or not, or who provides the money (regardless of whether there is any contact with the drug or the supplier) and the offender, who makes the actual supply happen by handing over the goods.

There would not need to be any payment made for an offence of supplying to be complete. For example, if a person purchased a quantity of cannabis and made it available to a number of friends to smoke as an act of hospitality, if anyone took the person up on the offer, that other person would be in unlawful possession. Equally, their actions would make the offence of supplying complete even though the supplier received no payment.
The matter of whether any payment was made would, however, have an effect upon how seriously the court dealt with the matter and this brings us back to the powers of search and seizure. Evidence of cash transactions can clearly indicate the extent of any profit motive, but lack of any such evidence would never be a bar to proceedings as long as a supply, offer to supply, or a concern in the arrangements can be proven.

Some users of unlawful drugs may also be engaged in the supply of those drugs to others. The extent of their involvement is a matter to be carefully considered in each case but the offender who is profiting from their transactions may tend to be more irresponsible in their choice of contacts and may be more likely to sell to young people.

Users of hard drugs, like heroin, quickly become addicted and their need to finance this habit may mean that they become active drug dealers themselves or become actively engaged in other criminal matters that will quickly generate cash.

**Possession of a controlled drug with intent to supply – Section 5 (3) of the Misuse of Drugs Act 1971**

The offence is designed to bridge the gap between evidence of an actual supply and evidence of possession only.

“Subject to section 28 of this Act, it is an offence for a person to have a controlled drug in his possession, whether lawfully or not, with intent to supply it to another in contravention of section 4(1) of this Act.”

The term ‘whether lawfully or not’ includes a person who has lawful possession but intends to supply it unlawfully to another.

**Example:**

- A person attends the local pharmacy to obtain their daily dose of heroin replacement medication (methadone) as they are addicted. The pharmacist hands the dose, as prescribed to them, in a clear plastic container and watches them tip the liquid into their mouth. The person leaves the pharmacy without swallowing the methadone and spits the liquid into an empty tablet bottle. They intend to supply the methadone to another for cash and it is found in their pocket by a police officer when they are searched for another matter. The person admits their intent when interviewed.
A doctor or nurse who has lawful possession of morphine but who intends to supply it unlawfully to another commit this offence if the evidence can be gathered.

A routine check might produce grounds for a search which, when carried out, reveals an amount of cannabis suitable for personal use. If the cannabis has been divided into small value 'deals', this indicates a possible intention to supply to others, particularly if the offender is found to be in possession of wrapping materials, e.g. metal foil and plastic bags. A further search may well reveal even more evidence of this offence. In addition, the presence of large or unusual amounts of cash carried about the person could be a sign of recent drug dealings.

2.8 General Defences (Supplying) – Section 28 Misuse of Drugs Act 1971

The defences for the offence of unlawful supply of a controlled drug are the same as the defences for unlawful possession of a controlled drug. The three defences which apply to both the offences of unlawful supply of a controlled drug and unlawful possession of a controlled drug are:

- lack of knowledge of the alleged fact
- lack of knowledge of a controlled drug
- the belief that it was a drug they were entitled to produce, supply, and possess

Searching for evidence

You have a power to search for drugs under Section 23 of the Misuse of Drugs Act 1971. This power will also be used in order to detect and investigate offences and gather evidence in respect of offences beyond possession.

Importing

An effective measure of prevention would be to restrict the supply of controlled drugs into the market as a whole. The law provides the maximum permissible punishment for persons concerned in the following drug activities:

- importing
- manufacture and
• supply of certain controlled drugs

The importing of controlled substances is governed by the Customs and Excise Management Act 1979 and anyone caught in contravention risks severe punishment, particularly if the intention is to supply the drug to others.

The penalties set out in Schedule 1 to the 1979 Act provides for the following penalties for the improper importation or exportation of controlled drugs (on conviction on indictment):

- Class A: life imprisonment
- Class B: 14 years’ imprisonment
- Class C: 14 years’ imprisonment

Television and newspaper reports make regular comment about seizures of large quantities, but it is very common for smaller quantities to be brought through Customs. Hand luggage and foreign mail lend themselves well to providing a regular supply line.

**Production and manufacture of controlled drugs**

Although the unlawful manufacture of controlled drugs is not often reported it continues to be a problem. From time to time there are arrests and seizures of locally made drugs, in particular LSD and amphetamine sulphate, more commonly known as ‘acid’ and ‘speed’.

The manufacture of these chemical-based drugs is relatively simple for anyone with knowledge of chemical processes and access to the right materials in sufficient quantities.

Manufacturing facilities of this kind are often sited in an isolated rural location and drugs are often stored for further distribution in safe house facilities.

**Preparing, producing or attempting to produce certain drugs**

This section covers a variety of activities. It is unlikely that any landlord, tenant or manager would voluntarily admit to such offences. If you suspect activities of this kind close liaison with both supervisors and drug specialists would be necessary.

**The production of a controlled drug – Section 4 (2) of the Misuse of Drugs Act 1971**

Section 4 (2) states it is an offence for any person unlawfully to produce a controlled drug or be concerned in the production of a controlled drug.
'Produce' means manufacture, cultivate or any other method or production.

This offence would cover:

- preparing opium for smoking (still common in some communities) and
- unlawfully producing, or attempting to produce, a controlled drug such as LSD or amphetamine

The cultivation of cannabis – Section 6 of the Misuse of Drugs Act 1971

It is an offence for any person to unlawfully cultivate any plant of the genus cannabis. The cultivation generally requires some amount of attention to the plant, for example watering or feeding it in some way. If no attention is given to the plant you could still consider the offence of simple possession.

Cannabis plants are similar to a tomato plant, but with a finer leaf that has a musky and heavy smell, particularly if you rub the leaves between your fingers.

These plants are grown outdoors (sometimes unwittingly) during the summer months, but may be found growing indoors at any time of the year. The seed of the cannabis plant is ‘hemp’ seed, which is a common ingredient in many commercial seeds for caged birds.

**Example:**

- You are at a person's home to investigate the damage that was caused to their garden gate by a passer-by. You are taken into a conservatory by the home owner where you intend to record details of the criminal damage and obtain a witness statement. Whilst there you notice one window sill has a row of plant pots that contain what appear to be green, healthy looking cannabis plants. You see a row of similar plants in the middle of the vegetable plot outside the window. The homeowner sees you looking and says the plants were a present from a relative so they make sure they water them each day. They are therefore illegally cultivating them in accordance with the above definition.

Although it is not likely that a cannabis plant would produce any resin in the British climate it is nevertheless a popular activity to dry and smoke the leaves.
Evidence

A prosecution case would be helped a great deal if your interview/investigation revealed evidence of guilty knowledge on the part of the cultivator, but legally it would suffice to prove that the plant is a cannabis plant and that it was unlawfully cultivated. The onus is placed on the accused to prove that they did not know it to be a cannabis plant.

2.9 Offences relating to premises

Permitting drug misuse on premises

The legislators acknowledge that the abuse of controlled drugs often takes place on premises and those who own or have a stake in the control of premises often encourage drug abuse by turning a blind eye to obvious unlawful activity.

This ‘turning a blind eye’ is sometimes the result of misguided loyalty, but can also be motivated by profit, as in the case of a publican who stands to gain from increased profit from his or her alcohol sales.

The offence of the occupier or manager of premises permitting drug misuse – Section 8 of the Misuse of Drugs Act 1971

It is an offence for any occupier or person concerned in the management of any premises, to knowingly permit or suffer any of the following activities to take place on those premises:

- unlawful production or attempted production of a controlled drug
- unlawful supply or attempted supply of a controlled drug or offering to do so
- preparing opium for smoking
- smoking cannabis, cannabis resin or prepared opium

The provisions of this offence also cover circumstances where premises, although not used for the actual act of smoking itself, are nevertheless used to supply or offer to supply cannabis or other drugs. The important word is knowingly.

This offence is intended to make it more difficult for the people involved in the distribution of drugs by placing legal responsibility on occupiers and managers of premises.
Closure notices

As a result of continuing problems with so called ‘crack houses’, legislation was brought in under the Anti-Social Behaviour Act of 2003 to close premises used or concerned with the misuse of drugs.

Section 1 of the Act states that:

This section applies to premises if a police officer not below the rank of superintendent (the authorising officer) has reasonable grounds for believing:

a. that at any time during the relevant period the premises have been used in connection with the unlawful use, production or supply of a Class A controlled drug, and

b. that the use of the premises is associated with the occurrence of disorder or serious nuisance to members of the public………

……..then that officer may authorise the issuing of a closure notice under Section 2.

For the purposes of the Act, the ‘relevant period’ referred to is a period of three months ending with the day on which the authorising officer considers whether to authorise the issue of a closure notice in respect of the premises.

Premises can be anything, including any land or other place, enclosed or not, and any outbuildings which are or are used as part of the premises.

The authorising officer must also be satisfied that the local authority for the area has been consulted, and that all reasonable steps have been taken to establish the identity of any person who lives on, or who has control of, or responsibility for, or an interest in the premises.

Posting the closure notice

The notice has to be ‘served’ by a police officer or local authority officer, and in order to be ‘served’ or ‘posted’ a copy must be fixed to:

- at least one prominent place on the premises
- each normal means of access to the premises
- any outbuildings which appear to the constable to be used with or as part of the premises; and
by giving a copy of the notice to at least one person who appears to the constable to have control of or responsibility for the premises, and

giving a copy of the notice to any person who lives on the premises, or who has control of, or responsibility for, or an interest in the premises

the closure notice must also be served on any person who occupies another part of the building or structure in which the premises are situated if the constable reasonably believes at the time of serving the notice under subsection 6 that the person’s access to the other part of the building or structure will be impeded if a closure order is made under section 2.

The notice has got to contain the following information:

- that an application will be made under Section 11B of the Anti-social Behaviour Act 2003 for the closure of the premises
- that access to the premises by any person (other than a person who habitually resides in the premises or the owner of the premises) is prohibited
- it must specify the date and time when and the place at which the application will be heard
- it must explain the effects of the closure order
- it must state that failure to comply with the notice amounts to an offence
- it must give information about the names of and means of contacting people and organisations in the area that provide advice about housing and legal matters

**The Closure Order**

Once the closure notice has been served, a police officer or local authority officer must apply to a magistrate’s court for a closure order. The hearing of the application for the order has to be within 48 hours of the notice being served, but the court may adjourn the hearing for up to 14 days to enable the occupier or other person with control of, responsibility for, or an interest in the premises to show why an order should not be made.

In order for the magistrates to issue a closure order they must be satisfied that:

- the premises in respect of which the closure notice was issued have been used in connection with the unlawful use, production or supply of a Class A controlled drug
• the use of the premises is associated with the occurrence of disorder or serious nuisance to members of the public, and

• the making of the order is necessary to prevent the occurrence of such disorder or serious nuisance for the period specified in the order

A closure order closes all or any part of the premises to all people for as long as the court decides, up to a maximum of three months. The police may apply for an extension to this period at any time whilst it is in force, but again the application must be made by an officer of at least the rank of superintendent after consultation with the local authority. The order may not be extended beyond a total of six months.

Powers with regard to closure notices

A police officer or an authorised person can enter the premises in order to do anything reasonably necessary to secure the premises, and can use reasonable force to do so. Similarly, entry may be made in order to carry out essential maintenance or repairs to the premises.

When this power is being exercised however, the officer or authorised person must be prepared to show evidence of their identity or authority to be on the premises to any person who is the owner, occupier or other person in charge of the premises.

Obstructing or Breaching Closure Order – Section 4 of the Anti-Social Behaviour Act

Arrest without warrant – police officers only

The Anti-Social Behaviour Act (ASBA) 2003 S4 states that a person commits an offence if he remains on or enters premises in contravention of a closure notice.

A person commits an offence if:

a. he obstructs a constable or an authorised person acting under section 1(6) or 3(2),

b. he remains on premises in respect of which a closure order has been made; or

c. he enters the premises

No offence is committed, however, if the person has a reasonable excuse for entering or being on the premises.
Under Section 7 of this Act, the owner or occupier of part of the building or structure subject to the closure, whose area of interest does not form part of the closed area, may apply to the court for an order allowing access to the premises.
3. Solvent Abuse

The powers and offences discussed in the remainder of these notes only apply to a police constable. However, Police Community Support Officers (PCSOs) play a vital role in supporting the community, gathering intelligence and using their powers to combat anti-social behaviour. Where a PCSO finds themselves unable to deal with a specific offence in relation to solvent abuse, they should seek the assistance of a constable.

In addition to controlled drugs, other substances have been subject to misuse, such as solvents. There is legislation to control the sale of such substances, but no legislation to cover misuse.

3.1 Solvents and other volatile substances

Many young people are abusing solvents and other volatile substances and such abuse can quickly lead to severe psychological dependence.

Young and inexperienced users run the greatest risks. This abuse is much wider than 'glue-sniffing' and covers the inhalation of many household substances whose vapours have effects similar to drugs, such as:

- fast-drying glues, cements and contact adhesives
- paints, lacquers, thinners, correcting fluid and thinner
- petroleum products, lighter fuel, anti-freeze, hair lacquer and nail varnish remover
- propellant gases in aerosol sprays such as deodorants, air fresheners and fire extinguishers
- surgical spirit, shoe and metal polish and dye

Several techniques are used to inhale the vapours, ranging from direct sniffing to sniffing from plastic bags to enhance the effects of the vapour. Thinners may be sniffed from saturated cloth.

Common effects include intoxicated and anti-social behaviour, unsteady appearance, slurred speech and visual disturbance.
Some users experience hallucinations and may become aggressive, committing reckless acts. Continuous abuse of these substances leads to a ‘sniffer’s rash’ around the nose and mouth, eye problems, liver and kidney damage, brain damage and even death.

Solvent abuse is a social problem requiring a multi-agency approach, with the police working in liaison with other caring agencies such as social, probation, medical and education services.

The Intoxicating Substances (Supply) Act 1985 and the Cigarette Lighter Refill (Safety) Regulations 1999 govern the supply of such substances.

### 3.2 Related offences

**Supplying or offering to supply a substance other than a controlled drug – The Intoxicating Substances (Supply) Act 1985**

Section 1(1) of this Act makes it an offence for a person to supply or offer to supply a substance other than a controlled drug:

a. “to a person under the age of eighteen who he knows, or has reasonable cause to believe, to be under that age, or

b. to a person who is acting on behalf of a person under that age and whom he knows, or has reasonable cause to believe, to be so acting if he knows or has reasonable cause to believe that the substance is, or its fumes are, likely to be inhaled by the person under the age of 18 for the purpose of causing intoxication.”

There is no list of substances contained within the Act.

There is a defence provided under Section 1(2) of the Act which states.

In proceedings against any person for an offence under subsection (1) above it is a defence for him to show that at the time he made the supply or offer he was under the age of eighteen and was acting otherwise than in the course or furtherance of a business.

**Cigarette Lighter Refill (Safety) Regulations 1999**

Gas fuels continue to be associated with the majority of deaths.

Regulation 2 makes it an offence for any person to supply any cigarette lighter refill canister:
• containing butane or a substance with butane as a constituent part

• to any person under the age of eighteen

There is a statutory defence under Section 39 of the Consumer Protection Act 1987 for the accused to show that they took all reasonable steps and exercised all due diligence to avoid committing the offence. Therefore, as in the previous Act, it is up to you to ensure the offence has been investigated thoroughly.

No offence is committed by the person found glue-sniffing, but criminal law may be invoked to deal with the results of solvent misuse, such as criminal damage, assaults and offences of disorder and nuisance. Where the evidence does not amount to a specific offence, the person may still be liable to arrest and be bound over to keep the peace. Try to treat young people sniffing solvents calmly and do not chase them unless it is absolutely necessary. Volatile substances have a direct effect on the heart, so sudden exertion or fright can result in the heart beating erratically which could lead to death.

In less serious cases, when other offences are not involved, it may only be necessary for the parents to be informed of the circumstances by the police. If abuse is persistent, the juvenile could, under the Children Act 1989, be dealt with as being in need of care and control.

3.3 Sources of help and information

Many national and local initiatives exist which provide assistance in relation to alcohol, drug and solvent abuse, including:

• medical practitioners

• advisory services

• treatment centres

• self-help and community groups

Alcohol

There are several government lead and locally provided support networks for those who have alcohol misuse issues. Counselling is one option that can be offered through a GP. Other treatments might include psychological therapies such as psychotherapy, cognitive behavioural therapy (CBT), and relationship therapy, which could be between members of a family, a couple, or work colleagues.
**Drugs**

FRANK action update is a confidential, anonymous advice and information support service about drugs. They can be contacted on 0300 123 6600, on the web at www.talktofrank.com or by email at frank@talktofrank.com to talk to young people, parents and covers concerns about drugs. People can talk to FRANK in 120 languages and an interpreter will be on hand when a call is received if this is required.

**Solvent Abuse**

There are a number of self-help groups available to try and help those who are addicted to household products such as gases, glues and aerosols. This is called ‘Volatile Solvent Abuse’ or VSA. One such organisation which is funded through an Innovation, Excellence and Strategic Development (IESD) grant is called ‘Community for Recovery’ and can be found at the following website address; http://www.communityforrecovery.org
3.4 Revision Questions

- What signs of drunkenness may a person display and what else may that behaviour be a sign of?
- Who is deemed to be an expert witness in court in relation to a person’s drunkenness?
- What are the differences between the offences of drunk in a public place, drunk and incapable and drunk and disorderly?
- If you reasonably believe you saw someone consuming alcohol in an alcohol free zone or a controlled drinking zone what could you do?
- Under what circumstances could a police officer in uniform direct an individual to leave a public place and not return to the locality for a period of time?
- How might a person who is under 18 years old in possession of alcohol in a public place be dealt with?
- What different types of liquor licences are there?
- What offences and powers relate to liquor licensing?
- Where could you find the list of the most commonly encountered drugs and their classifications?
- Which of the controlled drug classifications (A, B or C) has the most harmful drugs that also have the highest maximum criminal penalties for illegal use?
- What type of equipment may indicate that drugs are being used?
- What powers and criminal offences relate to drug possession and drugs supply?
4. Key Legislation

Key pieces of legislation applicable to this topic are:

- Section 91(1) of the Criminal Justice Act 1967
- Section 209 of the Criminal Justice Act 2003
- Section 12(4) of the Criminal Justice and Police Act 2001
- Code A of the Codes of Practice to the Police and Criminal Evidence Act 1984
- Part 1 and Part 1A of the Anti-social Behaviour Act 2003
- Section 1(3) of the Confiscation of Alcohol (Young Persons) Act 1997
- Section 1(1) of the Criminal Justice and Police Act 2001
- Section 27 of the Violent Crime Reduction Act 2006
- Section 30 of The Policing and Crime Act 2009
- Section 4 of the Anti-social Behaviour Act (ASBA) 2003
- Section 12 of the Licensing Act 1872
- Section 1 of the Licensing Act 1902
- Sections 15, 62, 70, 73, 111, 113, 117, 136-143, 145-147, 147A, 149-153, 159-161, 179, 180 and 191 of the Licensing Act 2003
- Section 1 of the Intoxicating Substances (Supply) Act 1985
- Section 12(1) of the Consumer Protection Act 1987